

United States
Circuit Court of Appeals

For the Ninth Circuit.

Apostles on Appeal.
(IN TWO VOLUMES.)

FIREMAN'S FUND INSURANCE COMPANY, a
Corporation,

Appellant,

vs.

THE GLOBE NAVIGATION COMPANY, a Corpora-
tion, and S. P. WESTON, as Trustee in Bank-
ruptcy of the GLOBE NAVIGATION COM-
PANY, a Corporation, Bankrupt,

Appellees.

VOLUME II.
(Pages 321 to 616, Inclusive.)

Upon Appeal from the United States District Court for
the Western District of Washington, Northern Division.

Filed

AUG 26 1915

(Testimony of Capt. A. W. Swenson.)

Q. At the very extreme sides of the vessel?

A. Yes, sir, that is right.

Q. That is the only way you can explain it?

A. Yes, sir.

Q. It did not go down through the deck itself?

A. No.

Q. And you were asked this morning about the water she had in her, when she was towed from Astoria to Portland. There were places in Astoria where her cargo could have been discharged on to the docks, were there not, if necessary?

A. I do not think there is any place in Astoria where it can be discharged.

Q. Are there not lots of docks?

A. There are lots of docks, but nothing but old dilapidated things not fit to hold cargo.

Q. The Hammond Lumber Company has a very extensive system of docks there, has it not?

A. They have, but their docks are all piled full of lumber at all times.

Q. I did not ask you as to whether or not they would have permitted you to use them. I asked you whether there were docks that could have been used, or practicable to use, if you could have gained the consent of the owners?

A. The Hammond Lumber Company's was practically the only dock that could be used for lumber in Astoria.

Q. But there are docks extending along the waterfront in Astoria for a mile, are there not?

(Testimony of Capt. A. W. Swenson.)

A. Yes, I expect more than that. Fishermen's wharves. [297]

Q. Now, at the time this vessel was towed to Portland, she had been pumped out by the tug "Wallula," had she not? A. Yes.

Q. So that she had about, in your judgment, three feet of water in her? A. Yes, sir.

Q. Did you measure it to see how much?

A. I did.

Q. Was the steam-pump in working order at that time? A. Yes, sir.

Q. Could you have taken out the remaining water with the steam-pump?

A. Well, they could have done so, but I was not in charge of the vessel.

Q. But I ask you whether it was possible?

A. Yes.

Q. It could have been done? A. Yes, sir.

Q. Now, there was no difficulty in this towage from Astoria to Portland, was there?

A. We had no accident, no.

Q. How did the tug tow, alongside or ahead?

A. Alongside.

Q. You did not think you were going to go ashore going up the river, did you, or strand?

A. I did not think so, no.

Q. It was practically the same as any other towage on the river, was it not?

A. Well, apparently it was at that time.

Q. Now, Captain, what did you mean by saying this morning [298] that it was not necessary to

(Testimony of Capt. A. W. Swenson.)

have any oakum in this seam between the ends of the plank and the stern post where you found this seam to be?

A. I did not say it was not necessary, Mr. Campbell.

Q. I beg your pardon, I thought that was what you said. What was it you said?

A. I said if a vessel was constructed right and the plank was fit and proper shape, that as a matter of fact if there was no oakum for this little space, it would not matter very much, as far as filling the vessel was concerned, a space of six inches. The construction should be so that the plank butts tight on the woodwork.

Q. You did not see this vessel when she was constructed? A. No.

Q. You never have been able to get in there to see how tightly that planking butts on the stern post?

A. I have not.

Q. Did not you find some soft seams above this large seam? A. No.

Q. Did you try the seams above it? A. I did.

Q. And they were all solid?

A. Apparently, yes.

Q. This gale that sprang up was a very heavy squall from the northwest?

A. Yes, a very heavy squall, blew hard for about an hour, very hard.

Q. Then passed off? A. A little bit less.

Q. What you would term a squall was it not, what you would [299] term at sea a squall?

(Testimony of Capt. A. W. Swenson.)

A. No, it was different from what we term a squall. The northwest wind usually comes that way, the way that one came.

Q. At the time Captain Crow examined her, before loading at Westport, you did not sling any staging under the stern so that he could get in and examine these seams? A. No, I did not.

Q. Or examine the water-closet flange?

A. No, I did not.

Mr. CAMPBELL.—I offer this telegram I read to the witness in evidence.

Paper marked Defendant's Exhibit 15, filed and returned herewith.

Redirect Examination.

Q. (Mr. CLISE.) Now, Captain, when you examined the vessel at St. John's and you found these soft spots, were they sufficient to allow any leakage into the vessel?

A. I do not think they were sufficient to—

Q. Well now, how long were you with the vessel at St. Johns?

A. I was there practically for six months.

Q. When did you leave her?

A. I think it was in April.

Q. 1912? A. 1912.

Q. Well, how long was she in dry dock?

A. She was only there a few hours.

Q. Well, if she was dry docked on or about the 8th or 10th or 11th of December, she was in the water then from that time until you left her, was she? [300]

(Testimony of Capt. A. W. Swenson.)

A. Yes, sir.

Q. Well, did she make water during that time?

A. No.

Q. Now, did you mean to state in answer to any question by counsel, that the vessel was ever in a leaky condition, in the way that term is usually used or at all?

A. She was never in a leaky condition, no.

Q. Have you ever been able to arrive at any satisfactory conclusion as to just how these leaks occurred? A. I have not.

Q. Now, when the vessel was examined at Astoria by Captain Crow, was he afforded every facility that he requested?

A. Every facility that he requested was accorded him.

Q. Now, then, when he asked you to test the pumps, did he request you to test the pumps by sucking water in over the side? I am inquiring at the time Captain Crow examined the vessel at Astoria, after she had discharged the coal. That is the time when he made the preliminary survey before loading for this voyage. That was the way he requested you to test the pumps, was it?

Mr. CAMPBELL.—Let him state what the facts were.

Q. I ask you if that was the way he requested you to make the examination. What request did he make of you?

A. He asked if the steam-pump was in working order, and I told him yes, I thought it was. He says,

(Testimony of Capt. A. W. Swenson.)

“Will you let me see it work?” “Certainly.” And so we just went there and started it up and I told him at the time, I says, “I do not think she has water enough in her to fetch the bilges.” He says, “How much water has she got in her?” I says, “She has got about seven or eight inches of water in her, not enough for the hand-pumps to fetch, even.” [301] So of course we startel it, and of course she would not fetch water, there was not water enough there to come up; in the suction-hose that we had been using, it was hanging right there over the side, and we turned that on and it worked all right.

Q. He was there to personaly see this, was he?

A. Yes, he was.

Q. Now, when Captain Cherry made this examination, how did he happen to make the examination?

A. He was requested.

Mr. CAMPBELL.—I object to any testimony about Mr. Cherry. There is no evidence in the record to show that Mr. Cherry was agent of the defendant.

A. Mr.Cherry was requested by Captain Crow to make the final examination and survey, as Crow was unable to be present.

Q. To whom did he make the report—

Mr. CAMPBELL.—I move to strike the testimony as hearsay.

Q. To whom did you make the request for this examination? A. To Captain Crow.

Q. How long have you known Mr. Cherry?

A. Four or five years.

(Testimony of Capt. A. W. Swenson.)

Q. Has he ever made examinations of other vessels for you on behalf of Captain Crow?

A. Not for me, but I understand that he done it on several occasions for other vessels.

Mr. CAMPBELL.—I move to strike the conclusion of the witness and as hearsay.

Q. Did Mr. Cherry make any statement to you after he had examined the vessel as to whom he was to make a report? [302] A. He did.

Q. To whom did he say he was to report?

Mr. CAMPBELL.—I object, there is no evidence in the record that Cherry was agent of the defendant.

A. To Captain Crow.

Q. From whom did you receive this report signed by Captain Crow, known as Plaintiff's Exhibit "N"?

A. This was given me by Mr. Cherry.

Q. (Mr. BOGLE.) Was that after he made the inspection which you said he was making at the request of Captain Crow?

A. Yes, sir, after he made the examination.

Q. (Mr. CLISE.) Mr. Cherry made this examination, and was he afforded every facility he requested for making the examination?

Mr. CAMPBELL.—My objection goes to all of this testimony as to Cherry.

A. He was.

Q. Now referring to the two reports that you made. One is the report which is in evidence here as Defendant's Exhibit 14, and the other the report which you made to the adjusters. Tell just exactly how these reports were made up, what you did do.

(Testimony of Capt. A. W. Swenson.)

A. This report (exhibit 14) was made entirely by myself after I came ashore without any help whatsoever. I had no one to refresh my memory or ask me any questions. The report I made to the adjusters was made to Mr. Becket, and he asked me several questions, which helped me to get data etc., down that I had omitted in this one.

Q. Who is Mr. Becket?

A. He is a representative of Johnson & Higgins, the adjusters. [303]

Q. Now were the words that were contained in the report to the adjusters your own words or were they the words that were written out by Mr. Becket, and you afterwards read over and signed, on making up the report from the verbal statements that you had made to him?

Mr. CAMPBELL.—I think you should show the witness the statement to the adjusters, and see if he can remember the report.

A. It was my own words, only he helped me to construct the data, etc.

Q. Did you dictate to a stenographer?

A. Yes, sir.

Q. (Mr. CAMPBELL.) Then at the time Becket was assisting you you did not recollect that the top of your deck-load had shifted four inches when you put her on the starboard tack?

A. No, I did not recollect it at that time.

Mr. CAMPBELL.—Are you going to offer the adjustment?

Mr. CLISE.—Yes.

(Testimony of Capt. A. W. Swenson.)

Q. I would like to have the witness identify the report contained in the adjustment, which he made before the adjusters. Did you read the report you made to the adjusters before you signed it?

A. I did.

Q. (Mr. CLISE.) Is the statement contained in the report of the adjusters substantially the same as the report you made to the adjusters? [304]

A. Substantially the same, only added a word here and there, that has changed my wording a little bit.

Q. Has their changing of a word or two, in your opinion changed the meaning.

A. Yes, sir, it has. There is this word which always states "immediately." There is never such a thing as "immediately." The pumps were started before it was discovered she was leaking, the pump was going before that time. We do not wait to find out if a vessel is leaking before we start the pumps.

Q. With the exception of that word "immediately" the report contained in the adjustment is substantially the same as you made it to the adjuster.

(Testimony of witness closed.)

Mr. CLISE.—We will have the usual stipulation in this case, waiving the signature of the witnesses?

Mr. CAMPBELL.—Yes, sir. [305]

Seattle, Washington, September 2, 1913.

Present: Mr. CAMPBELL, for the Defendant.

Mr. CLISE and Mr. BOGLE, for the Plaintiff.

[**Testimony of George F. Thorndyke, for Plaintiff.**]

GEORGE F. THORNDYKE, recalled for the plaintiff, testified as follows:

Q. (Mr. BOGLE.) You are general manager of The Globe Navigation Company? A. I am.

Q. Where is the Globe Navigation Company's principal place of business? A. Seattle.

Q. Is that the home port of the "Nottingham"?

A. She is registered in Port Townsend, hailing from Seattle.

Q. Has the Firemen's Fund Insurance Company, the defendant in this case, established offices in the state of Washington? A. Yes, sir.

Q. Where?

A. Seattle, in the Colman Building.

Q. Who is the agent? A. Mr. Frank Taylor.

Q. Did you take out this insurance? A. I did.

Q. Both policies? A. I did.

Q. To whom did you apply for it?

A. Mr. Taylor, of the Firemen's Fund Insurance Company.

Q. Where? [306]

A. Colman Building, Seattle.

Q. Was that application made in writing or personally? A. Personally, probably.

Q. Did you subsequently receive the policy.

A. I did.

Q. Both policies? A. I did.

(Testimony of George F. Thorndyke.)

Q. From whom? A. Mr. Taylor.

Q. Where? A. Seattle.

Q. Did you pay the premium? A. I have.

Q. Where? A. Seattle.

Q. To whom? A. Mr. Taylor.

Cross-examination.

Q. (Mr. CAMPBELL.) When did you begin to place your insurance direct with the Firemen's Fund?

A. I think that was the second year that I had done business with Taylor, with the Firemen's Fund direct.

Q. The years 1910, 1911 *and 1911* and 1912, you did that business direct with the Firemen's Fund?

A. I think so. I will not say positively. I am under the impression that I did business with Taylor and the Firemen's Fund these two years, but it may be that I only did it that one year.

Q. Was this policy issued to you direct? (Showing paper to [307] witness.)

A. I could not say.

Q. Who handled your insurance prior to the time you began to place it direct with the Firemen's Fund? A. I think Johnson & Higgins.

Q. Don't you know?

Mr. CLISE.—For what length of time?

Mr. CAMPBELL.—From 1908, for the period following 1908 to the date he began to place the insurance direct with the Firemen's Fund.

Q. Did not Johnson & Higgins act for you in the placing of your insurance on all of your vessels?

(Testimony of George F. Thorndyke.)

A. I do not remember anybody else acting for us, in the hiring of insurance except Johnson & Higgins. We have several kinds of insurance. Mr. Frederick's company has underwritten for us and Mr. Hudson and Mr. Alexander of the Calhoun, Denny & Ewing, have underwritten insurance for us. Without looking at the record I would not want to state positively that I never hired insurance except through Johnson & Higgins in the Firemen's Fund. My best recollection is they placed our whole insurance with Johnson & Higgins all the time up to the time I commenced with the Firemen's Fund with Mr. Taylor.

Q. Johnson & Higgins acted as your agents in placing your whole insurance with various companies?

A. Johnson & Higgins were Insurance Brokers.

Q. And you went to them to engage their services to place insurance on your vessels in various companies? A. Yes.

Q. Now, they were doing that for a period of time immediately [308] preceding the date when you began to do your business direct with the Firemen's Fund?

A. My recollection is it was all the time until we commenced with the Firemen's Fund.

Q. When you began to place your insurance direct with the Firemen's Fund, you only received Firemen's Fund policies? A. That is right.

Q. And were you not from 1910 and 1911 carrying \$25,000 on the "Nottingham"? A. I think so.

Q. You received from the Firemen's Fund two policies? A. Yes.

(Testimony of George F. Thorndyke.)

Q. One for \$19,000 and the other for \$6,000, being payable to the Globe Navigation Company \$19,000 and \$6,000 to the Trust Company of America?

A. Yes, sir.

Q. Where does the Trust Company of America have its main office?

A. I think in Cleveland, Ohio.

Q. Is that where you do business with it, Cleveland, Ohio? A. I think so.

Q. Is it with the Cleveland, Ohio, office that you hold communication?

A. I have very little communication with them.

Q. When you have communication and write them?

A. I think it is Cleveland, Ohio.

Q. Now, is it Cleveland, Ohio, or is it New York?

A. I cannot state. That business has been identified with two or three of these trust companies in the east, the Equitable and the Trust Company of America. [309]

Q. Now, I hand you Firemen's Fund Policy No. 103,010, which covered the "Nottingham" from April 20, 1910, to April 20, 1911, and call your attention to the fact that that policy of insurance for \$19,000 on a valuation of \$55,000—You are familiar with the policies involved in this litigation, are you not?

A. I am.

Q. Do you recollect what the valuation of the "Nottingham" is as placed in the policies in suit?

A. \$45,000.

Q. What was the occasion, under what circumstances did you secure a reduction in the valuation of

(Testimony of George F. Thorndyke.)

the "Nottingham" from \$55,000 in the policies of 1910 and 1911, to \$45,000 in the policies of 1911 and 1912?

A. My recollection is by taking out five thousand dollars additional insurance on the vessel they made the reduction in the insured value of the ship.

Q. When you placed this insurance through Johnson & Higgins who dictated the terms of the policies, yourself, or did Johnson & Higgins?

A. I think in dealing with the Firemen's Fund undoubtedly Johnson & Higgins, after conference with us.

Q. You were accepting their advice as expert insurance brokers? A. Naturally.

Q. Prior to 1908 you were covering your vessels with a partial loss insurance, were you not?

A. I do not remember.

Q. Well, do you recollect whether you ever had your vessels insured under partial loss policies?
[310]

A. I have, yes; have had them insured for five per cent average.

Q. By five per cent average you mean that five per cent of all partial losses or damages shall be assumed by the owner? A. By the owner.

Q. Do you recollect about the date that you began to take out only total loss insurance?

A. Well, I do not remember when we changed.

Q. Well, was it about 1908?

A. I am inclined to think it was earlier than that.

Q. Is there any difference in the rate of premium

(Testimony of George F. Thorndyke.)

that you were required to pay to the insurance companies for a partial loss policy and a total loss policy?

A. I do not remember.

Q. Cannot you recollect whether or not it would cost you any more to get policies that would cover total or partial losses than to get policies covering only total losses?

A. My judgment is that we paid less.

Q. For which?

A. We paid a less premium on the five per cent average than we are asked to pay now on total loss only.

Q. That was so you would have lower insurance?

A. I do not know.

Q. Did you make any inquiries as to comparative rates between partial loss insurance and total loss insurance? A. I do not recollect now.

Mr. CAMPBELL.—This is not cross-examination of what you have inquired of the witness, but if required I will make him my own witness for that purpose. [311]

Q. I would like to know whether or not you asked Mr. Cornfoot of the Albina Engine Works to bid on the repairs of any of your vessels within the last sixty days?

A. I do not remember asking him for any such.

Q. Did you write him asking him to submit a bid for doing certain work on some of your vessels in Portland? A. I did not.

Q. Did not you personally ask him to do so?

A. I did not.

(Testimony of George F. Thorndyke.)

Q. Did you discuss with him a bid which he had put in for repairs on one of your vessels?

A. I may have spoken to him about it.

Q. Did not you discuss a bid which he put in for the repairs which you were going to effect on this particular vessel that was in the port of Portland within the last sixty days?

A. Only to that extent, in the Speidel building, the day we were there, he asked if I got a letter from him about repairs on the "Nottingham" and I told him I had, and he asked if I had come to a decision yet, and I said no.

Q. Did you discuss with him his bid?

A. I do not recollect discussing it any further than I say.

Q. What did you do, send out a call for bids there in Portland on that vessel? A. No, I did not.

Q. Who did?

A. I wrote down to Marcus Talbot and asked him if he knew anybody that would undertake to clean the bottom. I will explain that we were taking the vessel on the dock at the Port of Portland and they do not do any repair work [312] on the dock, and I asked Talbot if he knew anybody that would be liable to want to work on the "Nottingham" when she was drydocked, and I wished he would speak to them and let me know what they would charge.

Q. Did you receive bids for that work?

A. We received bids from various people, amongst others I think was the Albina Engine Works.

Q. You discussed that with him, the question of

(Testimony of George F. Thorndyke.)

her repair on her arrival there?

A. It was the day we were in the Spaulding building, to the extent I tell you.

Redirect Examination.

Q. (Mr. BOGLE.) You say Johnson & Higgins were brokers?

A. Insurance brokers and marine adjusters.

Q. Marine insurance adjusters? A. Yes, sir.

Q. They have an office in Seattle?

A. Yes, the Colman building.

Q. Have had during all the years you have spoken of? A. Yes.

Q. You said that during the years 1910 and 1911 by taking out an extra five thousand dollars insurance you succeeded in getting the underwriters to agree to the valuation of \$45,000 instead of \$55,000, is that correct? A. That is my recollection, yes.

Q. You have stated heretofore that the vessel was worth not to exceed thirty thousand dollars. Why was she valued in these policies at \$45,000 and \$55,000 when she was only worth \$30,000? [313]

A. The Firemen's Fund Insurance Company required that valuation to be placed in the policies.

Q. (Mr. CAMPBELL.) You have to accept the valuations that the insurance companies place in the policies on these wooden vessels if you want their insurance? A. Yes, sir.

Q. These valuations are placed in there for insurance purposes?

A. I assume so. I wanted to buy insurance. They told me the best terms they would sell it for

(Testimony of George F. Thorndyke.)

and that was the requirement that they put, \$45,000 valuation in the policy.

Q. Is this the notice of abandonment that you gave in this case? A. It is, yes.

Q. Is this a copy of the letter that you received declining to accept the abandonment?

A. I think undoubtedly it is. Yes, sir.

Mr. CAMPBELL.—I offer these two letters in evidence, the notice of abandonment and the refusal of acceptance.

Papers marked Defendant's Exhibits 16 and 17 respectively, filed and returned herewith.

Q. Now, the letter refusing to accept the abandonment was signed by Mr. Taylor, was it not?

A. Yes, sir.

(Witness excused from the stand.) [314]

[Testimony of H. R. Clise, for Plaintiff.]

H. R. CLISE, being duly sworn, testified on behalf of the plaintiff as follows:

Q. (Mr. BOGLE.) Your name is H. R. Clise?

A. Yes, sir.

Q. You reside in Seattle? A. Yes, sir.

Q. You are an attorney at law? A. Yes, sir.

Q. One of the attorneys in this case?

A. Yes, sir.

Q. What is your relation to the Globe Navigation Company, and what has it been during the last five years?

A. I have been its general counsel during that time. I think I am probably a vice-president of the company.

(Testimony of George F. Thorndyke.)

Q. Are you a member of the board of directors?

A. I am not a member of the board of directors.

Q. Where is that company incorporated?

A. New Jersey.

Q. Seattle is its headquarters?

A. Seattle is its headquarters.

Q. You have general charge of its business out here in the way of looking after its board meetings and all of its general legal affairs as well as its administrative affairs?

A. I look after all its legal affairs and administrative affairs other than the actual operation of the vessels themselves, that is Mr. Thorndyke's business.

Q. I direct your attention to the allegation of the complaint in this case, that policy No. 103,834 issued by the defendant in favor of the Trust Company of America. [315] Who is the Trust Company of America?

A. That is a trust company holding certain of the bonds of the company.

Q. The Globe Navigation Company?

A. The Globe Navigation Company.

Q. Was this policy made in its name to protect it as trustee of the mortgage bonds? A. Yes, sir.

Q. Who has been its representative here looking after this policy and their interest in the property under that policy?

A. I have looked after all these matters.

Q. I call your attention to Defendant's Exhibit 16, which is the notice of abandonment. Was that

(Testimony of George F. Thorndyke.)

dictated by you or given under your direction?

A. That was given under my direction.

Q. At that time were you acting as representative and attorney of both the Globe Navigation Company and the Trust Company of America?

A. Yes, sir.

Q. Mr. Clise, after this vessel was brought into Astoria by one of the tugs owned by the Port of Portland, was there a libel suit brought against the "William Nottingham" in favor of the salvors?

A. Yes, sir, there was.

Q. Who were the parties to that suit?

A. The Port of Portland and the officers and crew of the tug "Wallula," they were libelants and the schooner "Nottingham" was respondent.

Q. Where was the schooner "Nottingham" lying at the time this libel was served? [316]

A. Astoria, Oregon.

Q. Was that before she had been relieved of the cargo? A. Yes, sir.

Q. Immediately after she had been brought in?

A. A certain number of days, not immediately; a certain number of days there.

Q. And the levy was made on the schooner "William Nottingham" at Astoria?

A. At Astoria, yes.

Q. What was the amount claimed in this libel for salvage?

A. Thirty thousand dollars, but the libelants reserved the right to offer proof upon this point as the truth may appear.

(Testimony of George F. Thorndyke.)

Q. You were notified of that libel, were you?

A. We were.

Q. Did you personally take charge of the interests of the "William Nottingham"?

A. I personally took charge of the interests of the "William Nottingham." I also brought up the underwriters, not by general appearance, but by authorization, we had their authorization; we consulted with them about everything.

Q. Did you notify the underwriters immediately after that libel was served? A. I did.

Q. And that was while the vessel was lying at Astoria? A. Yes, sir.

Q. What was your information as to whether the cargo could be discharged at Astoria or not, at that time?

A. Our information was that the cargo could not be discharged at Astoria. [317]

Mr. CAMPBELL.—I object as hearsay.

Q. Did you undertake, acting both for the Globe Navigation Company and the underwriters, to get the vessel brought to St. Johns, or Portland?

A. I did. I made written application to the United States Court at Portland, to have the vessel with her cargo on board removed from Astoria to St. Johns, Oregon.

Q. Prior to making the application to the Court, did you make any application to the proctors representing the libelants for a stipulation to that effect?

A. I did.

Q. With what result?

(Testimony of George F. Thorndyke.)

A. They refused to enter into that kind of a stipulation, and then I applied to the Court for the order, and there was a hearing had before the Court and argument made.

Q. Did you secure the order for the removal of the vessel? A. Yes, I did.

Q. On what conditions?

A. I secured an order from the Court to remove the vessel from Astoria to St. Johns, upon the condition that the expenses would be borne by the Globe Navigation Company; that The Globe Navigation Company would assume the risk incident to the removal.

Q. Did the Globe Navigation Company accept these conditions and secure the removal of the vessel? A. It did.

Q. The expense of that removal were all shown in your testimony in this case? A. Yes, sir.

Q. Personally you were not familiar with the expenses, the [318] total items of expenses?

A. Of the removal?

Q. Yes.

A. No, except in settlement with the Port of Portland for the salvage charges.

Q. Did you secure a settlement with the Port of Portland for this claim for salvage? A. I did.

Q. At what figure? A. Three thousand dollars.

Q. And was that sum paid? A. It was.

Q. By the Globe Navigation Company?

A. By the Globe Navigation Company and Underwriters together.

(Testimony of George F. Thorndyke.)

Q. By whom was it first paid to the libelants in the case?

A. The Globe Navigation Company paid it.

Q. And you were reimbursed to some extent by the underwriters? A. We were.

Q. And that is shown in the complaint, is it?

A. The items are shown in the complaint.

Q. Was the reimbursement made by the underwriters upon that particular item or upon the whole, or a part reimbursement or partial reimbursement on the total expense?

A. Reimbursement on the total expense incident to the libel.

Q. And the amount reimbursed by them is shown by the complaint in this case?

A. I think not.

Q. You show the credit there?

A. No, I do not show the credit.

Q. What is your understanding as to the amount you received? [319]

A. They have paid, as I understand, five-sixths of the expenditures which were made incident to the libel.

Q. Then, as I understand, the defendant has repaid the Globe Navigation Company five-sixths of all expenses incurred by them in connection with the salvage or settlement of this salvage suit, including expenses of taking the vessel to St. Johns, and the expenses in connection with it up to the time of the settlement of the salvage suit, about May 15th?

A. No, you are wrong there. The salvage suit

(Testimony of George F. Thorndyke.)

was on the 8th day of February, 1912, since which time—up to that time they paid five-sixths of the expenses in connection with this salvage operation, including the taking of the vessel from Astoria to St. Johns and the discharge of the cargo.

Mr. CAMPBELL.—That is hardly correct; the cargo contributed to that salvage, too.

Q. Can you, Mr. Clise, get the exact figures of the amount that you paid out in connection with the salvage and the expense of taking the vessel from Astoria up to St. Johns and the docking and the discharging, up to February 8th, the date you settled the salvage suit, and the amount that has been contributed by the defendant on these expenditures?

A. Well, the amount that was incurred in the salvage suit included the removing of the vessel from Astoria to St. Johns and the discharging of her cargo while there, is the amount stated in paragraph nine of my first cause of action, to wit, \$5971.07. But this amount does not include anything except the sum actually paid to the Port [320] of Portland at the time the libel suit was dismissed.

Q. Now, can you give us the exact amount you were paid by the underwriters on these items?

A. \$4975.72 and the owners paid \$995.15.

Q. Calling your attention to Plaintiff's Exhibit "J," state when that came into your possession.

A. That came into my possession either the day of its date or the day after, and it remained in my possession from that time until it was introduced in evidence in this case.

(Testimony of George F. Thorndyke.)

Q. Is there any other statement, Mr. Clise, that you want to make, in explanation of that report?

A. I wish to make this statement, so as to show that the word "unknown" referred to in Mr. Charles Page's testimony appeared as "unknown" in the duplicate original that was delivered to me at the time it was made by Mr. Walker, and that there has been no changes or alterations made in that respect.

Q. The report is in the identical shape now and when introduced in evidence as when delivered to you by Mr. Walker or Thorndyke, on the day it was signed or the day after? A. Yes, sir.

Q. (Mr. CAMPBELL.) You mean that the exhibit you have in your hand is now in the same condition that it was when delivered to you?

A. Yes, sir.

Q. (Mr. BOGLE.) Your company was the owner of the schooner "William Nottingham" at the time of the wreck in controversy [321] here?

A. It was.

Cross-examination.

Q. (Mr. CAMPBELL.) While the salvage case brought by the Port of Portland was up, you say that there was an understanding between yourself and the underwriters that that was to be without prejudice to the rights of any of the parties involved in this litigation? A. It was.

Q. And what ever occurred or was done in that matter was not in any way to be used or construed as an expression of the rights of either party involved

(Testimony of George F. Thorndyke.)

in this suit? A. That is correct.

Mr. BOGLE.—We concede that.

Q. Now, whatever the underwriters on the hull paid you or contributed, rather, to the salvage of the boat by the Port of Portland, and the expenses incident to the salvage was paid by them under admission at that time that they were liable under their policy for salvage charges?

A. So I understood.

Q. Whatever their proportionate share was?

A. Yes, sir.

Q. (Mr. BOGLE.) Did the underwriters *join* join with you in this guarantee against risk in removing the vessel from Astoria to St. Johns?

A. They did not.

Q. Did you ask them to do so? [322]

Q. (Mr. CAMPBELL.) You say when you came to settle this salvage case you were sent five thousand dollars from San Francisco? A. Yes, sir.

Q. And you sent back how much?

A. \$24.28.

Q. Who sent that money to you, Johnson & Higgins? A. Johnson & Higgins.

Q. It came to you from Johnson & Higgins?

A. It came to us from Johnson and Higgins, if that is the fact.

Q. You do not know what portion of the \$4975.82 was paid by the underwriters on the hull of the vessel, this defendant in this case and the owners of the cargo?

A. I do not know anything about that. That was

(Testimony of George F. Thorndyke.)

settled between the underwriters at San Francisco.

Q. The whole matter, so far as you were concerned, was in the hands of Johnson & Higgins representing you, was it not, that is the collecting of the money from the underwriters?

A. No, I did not understand anything of the kind, but Johnson & Higgins were fully conversant with the matters, and sometimes we would telegraph Johnson & Higgins and sometimes we would telegraph the Firemen's Fund.

Q. You do not mean to say that the Fireman's Fund put up all of the \$4975.72?

A. I did not say that, for I do not know who put it up.

Q. Included in that is whatever is the cargo's proportion? A. I suppose there is.

Q. That is to say, as you figure it out, one-sixth of the salvage was to be borne by the owners of the vessel and [323] five-sixths by the underwriters of the vessel and the cargo interests?

A. Yes, that is right.

Q. (Mr. BOGLE.) Mr. Clise, after the bids for the repair of the "William Nottingham" were received and examined by the manager, Mr. Thorndyke, on behalf of the Globe Navigation Company, did he make any report to you on these various bids?

A. Yes, sir.

Q. In writing? A. It was.

Q. Will you please look at the document I now hand you and state if that is the report he made to you.

(Testimony of George F. Thorndyke.)

A. That is the report that was made to me at that time.

Mr. BOGLE.—I offer this in evidence.

Mr. CAMPBELL.—I object, it is a mere self-serving declaration.

Q. That was made the date it bears, March 12, 1912? A. It was.

Paper marked Plaintiff's Exhibit "P," filed and returned herewith.

Q. (Mr. CAMPBELL.) Did you know of the existence of that letter at the time you were in Portland taking Mr. Mackintosh's deposition?

A. Yes, sir.

Q. You had it in your possession at that time, did you? A. I think I did.

Mr. CAMPBELL.—I make the further objection to it on the ground that the statements therein made by Mr. Thorndyke are [324] hearsay.

(Witness excused.)

Recess taken until 2 P. M. September 3, 1913.
[325]

Seattle, Washington, September 3, 1913.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

IT IS HEREBY STIPULATED by and between the proctors for the respective parties hereto, that the following work was not necessary to restore the schooner "Nottingham" to the same condition that she was in prior to the disaster which she met after leaving the port of Astoria on October 2d, 1911.

1. It was not necessary to cork the bottom from

the third plank below the light-load line down, except as provided in the original specifications. It is further stipulated that the foregoing admissions as to bottom corking and removal of shoe shall not be taken as an admission by either party of the necessity or non-necessity of other repairs of the vessel.

2. That it was not necessary to remove any portion of the shoe except that provided in the original specifications.

3. It is further stipulated that the cost of resalting the vessel is \$——.

4. It is further stipulated that on April 15, 1912, proctor for the libelant made a give or take offer for the "Nottingham" of five thousand dollars, said offer being without prejudice to the rights of either party in the pending litigation. [326]

**[Testimony of Frank Walker, for Plaintiff
(Recalled).]**

FRANK WALKER, recalled on behalf of the plaintiff, testified as follows:

Q. (Mr. CLISE.) Referring to Plaintiff's Exhibit "J," which is your supplemental report of survey dated March 4th, 1912, Mr. Page, one of the witnesses for the defendant, testified that the word "unknown," which is the second word in the eighth line, appeared in the paper which he had, which was a copy made by someone in his office, appeared as "known." Will you state how this word, which appears in this exhibit as "unknown" appeared in your original notes and in all copies of this report furnished by you?

A. It appears "unknown" in all copies furnished

(Testimony of Frank Walker.)

by me in the original report and all copies that I furnished.

Q. So that if the error occurred in anybody's copy, are you able to explain it?

A. No, I am not. It might be a typographical error on the part of the stenographer.

Q. Now, again referring to this same exhibit. What was the reason for this supplemental report of survey being made?

A. The reason of that survey report being made, I think I explained before, was because that in making this survey of the vessel, these items—that Captain Crow, the underwriters' surveyor, would not agree with, and rather than have any dispute in the specifications, I only drew up the first specifications to comply with everything that was agreed upon.

Q. Am I to understand then that you considered the items contained in the supplemental report as necessary, notwithstanding Captain Crow's disagreement? [327]

A. I considered them necessary, yes, sir.

Q. Now, I call your attention to the fact that this vessel was supposed to be restored to the same condition that she was prior to her leaving Westport on this voyage in October, in order to determine whether or not there was a constructive total loss under the terms of the policy, and that it was necessary that the vessel should be placed in that condition. Now, when you came to actually repair a vessel, is it usual that in the first survey that you

(Testimony of Frank Walker.)

make, and the specifications that you prepare, that you include everything that the actual repair of a vessel shows to be necessary?

A. Oh, no. In many cases, in the majority of cases, we have to draw up a supplementary report of survey, for the simple reason that a great deal shows up in the actual carrying out of the work that cannot be seen at the time of the first survey, or the extent of it cannot be determined.

Q. And under the peculiar conditions governing this case, as the actual repairs were not being made, was this supplementary survey to include everything that in your opinion you deemed necessary to restore the vessel to her original condition?

Mr. CAMPBELL.—I object to the question for the reason that it assumes a condition of fact that does not appear in the record as having existed, to wit: The peculiar conditions of this case. And, on the further ground that the evidence shows that a thorough examination was made of the vessel and specifications were drawn, covering them.

A. Yes, sir. [328]

Q. Now, Mr. Walker, are you acquainted with the actual construction of the “Nottingham”?

A. Yes, sir.

Q. Do you know when and where she was being built?

A. I do not know the date she was being built. I saw her being built, on many occasions.

Q. Where was she built?

A. Built at Ballard.

(Testimony of Frank Walker.)

Q. A suburb of Seattle?

A. A suburb of Seattle.

Q. Will you explain to the Court, then, the actual construction of the water-closet, especially with reference to the liability of her taking water through the lead pipe leading down from the closet to the outside of the vessel?

A. The vessel, where the water-closet pipe leads through is filled solid between the cants, and the water-closet pipes pass through solid wood, and is flanged over on the outside.

Q. All the way it passes through—

A. All the way it passes through solid wood, and it is flanged on the outside.

Q. If this pipe was not there at all, would any leakage occur from the outside?

A. If the pipe only entered the solid wood and did not pass right through, there would be practically no leakage.

Q. How far above the water is the opening of the water-closet pipe, when the vessel is in salt water?

A. Loaded?

Q. Yes.

A. When the vessel is fully loaded the pipe is above the [329] water at all times.

Q. If she was loaded to the 19-foot mark, can you state how far the pipe would be above the water?

A. The pipe was somewhere near the 21-foot mark. It would be 12 or 15 inches above the water.

Q. Now, will you explain to the Court the construction of the vessel at the stern post, so that if

(Testimony of Frank Walker.)

in this corking that Captain Gibbs has testified concerning, there was no oakum whatsoever, would it be possible for water to enter the vessel at all or in any quantity?

A. There might be a slight leakage, and it depends on the fitting of the planks, where the planks fit up on the rabbit of the deadwood, it is wood to wood, and if the planks fit on that rabbit perfectly tight, no water can get in, regardless of oakum or not.

Q. Do you know how that does actually fit on the "Nottingham"?

A. It is very good, it fits very good. It was good work throughout the "Nottingham" when she was built.

Q. I believe you have already testified there was no oakum in that seam when you examined it in December, have you not?

A. I do not think I have testified. I do not remember that the question was asked.

Q. Did you ever examine this crack that Captain Gibbs has testified about? A. The water-closet?

Q. The stern post?

A. The seam in the hood ends?

Q. Yes, sir.

A. Yes, sir, I examined that very carefully with Captain Crow. [330]

Q. When?

A. On the drydock, I think, in December, when I first made the specifications with Captain Crow.

Q. Well, if the vessel was on the drydock at St. Johns about the 11th of December, is that the

(Testimony of Frank Walker.)

time when you examined her?

A. My survey report will give the exact date. I do not know the date.

Q. Look at your report and state what date it was.

A. December 21st.

Q. December 21st, 1911? A. Yes, sir.

Q. That is the time when you examined it with Captain Crow? A. Yes, sir.

Q. Referring to this seam near the stern post, will you describe the condition you found it in when you examined it with Captain Crow?

A. Yes. When I examined it with Captain Crow, the cement had been scraped out or the cement had fallen out, but the seam was full of oakum and all the seams around there were full of oakum. I climbed a ladder with Captain Crow, he hung on the rudder while I climbed, and I shoved a knife in the seam, and I found the oakum slightly slack. I could shove the blade of my knife in between the oakum and the wood.

Q. How wide was this seam?

A. The seam was an ordinary seam, perhaps three-eighths of an inch wide.

Q. How long?

A. The seam ran up and down the hood ends, the end of the plank. [331]

Q. How long was this where you found the oakum slightly displaced? A. Oh, about six inches.

Q. In the condition that the seam was in at the time you saw it in December, would it have been possible for any quantity of water to pass through that

(Testimony of Frank Walker.)

opening into the vessel?

A. Absolutely no; very little water could pass in, if any.

Q. In your original examination you testified that you saw the vessel a few days after she arrived at Astoria? A. Yes, sir.

Q. And you continued to be acquainted with and to survey and examine the "Nottingham" for six months thereafter? A. Yes, sir.

Q. Were you able from this investigation to arrive at any fact that would indicate how the water actually got into the "Nottingham" after leaving Astoria?

A. The only way that I could account for the water getting in the ship was through the hatches.

Q. By reason of the vessel having taken water in a more or less unknown manner, and by reason of the heavy weather and severe straining through which the "Nottingham" went in the storms after leaving Astoria, in preparing your reports and specifications, was it necessary to take any extra precautions to make good this strain or to prevent the like of this occurring again?

Mr. CAMPBELL.—I object, the specifications speak for themselves, and the agreement as to the work that was necessary to be done.

A. Yes, I considered it necessary to take every precaution. [332]

Cross-examination.

Q. (Mr. CAMPBELL.) You say that the only way that you could account for the "Nottingham"

(Testimony of Frank Walker.)

having gotten water into her after you had made a thorough examination at Astoria and at the dock, was through the hatches? A. Yes, sir.

Q. You found no other places of leakage that would account for that water getting in the vessel?

A. Not any place that would allow any quantity of water to get in.

Q. Now, how did you happen to be so carefully watching the construction of the "Nottingham" during her building, were you the surveyor in charge? A. I was the company's surveyor.

Q. At that time? A. Yes, sir.

Q. Did you have charge of her construction?

A. No.

Q. You do not mean to say that this toilet closet pipe, or the space through which the toilet closet pipe passes from the closet itself to the outside of the planking is water tight, so that water would not go in from the flange?

A. From the inside of the ceiling to the outside of the planking is solid wood, and the space up above the ceiling up under the deck is the pipe itself.

Q. Was there a solid piece of wood put in between the ceiling and the planking? A. Yes, sir.

Q. And this pipe passes through that?

A. Passes through solid deadwood. [333]

Q. Was that wood corked between this particular piece of deadwood, corked between the outside plank and between the ceiling?

A. It is snugly fitted.

Q. I ask if it was corked.

(Testimony of Frank Walker.)

A. No. The outside plank is corked.

Q. The space between the deadwood and the ceiling and the plank are not corked?

A. No.

Q. If the planking is fastened so tightly on to the stern post of vessels, and this one in particular, why is it that you are so careful to cork the hood ends of the plank? A. That is an extra precaution.

Q. It is put there for the purpose of preventing a leakage? A. Yes, sir.

Q. And it is always done on every wooden vessel?

A. It is always done on every wooden vessel.

Q. I understood you to testify on your first examination that you made no inspection of this vessel from the time you drew up the original specifications and the supplemental report?

A. My testimony will show that, I do not know.

Q. You do not care to change your testimony in that particular? A. No.

Redirect Examination.

Q. (Mr. CLISE.) I understood you to testify that the supplemental report was based upon the examination that you made of the vessel at the time that you made the examination [334] with Captain Crow? A. Yes, sir.

Q. And that it was supplemental and contained matters to which Captain Crow did not agree, and which you, in your opinion, considered necessary?

Mr. CAMPBELL.—I object as leading.

A. Yes, sir. It contained matters that we did not agree upon, and at the same time they were so in-

(Testimony of Frank Walker.)

sistent upon some of these items that were necessary to be done, although they would not agree to them. In this first specification Captain Crow was insisting these items were necessary as well as myself.

Mr. CAMPBELL.—I move to strike the answer as being a conversation with a deceased person.

Q. Mr. Walker, if the repairs had been made in conformity with the bids of William Cornfoot or the St. Johns Shipbuilding Company, would it have been necessary to have had the same inspected during the construction of the work? A. Yes, sir.

Q. What would have been a reasonable charge for such inspection?

A. Ten to fifteen dollars a day.

Q. (Mr. CAMPBELL.) That is, inspected by the owner?

A. Inspected by someone for the owner.

Q. And you would charge ten or fifteen dollars a day? A. I should charge a great deal more.

Q. How much would you have charged?

A. Twenty-five dollars a day and expenses.

Q. (Mr. BOGLE.) Is it customary, Mr. Walker, for owners to [335] have an inspector present where work of that character is done under contract?

A. Yes, in every case it is customary to have their representative there.

(Witness excused.) [336]

[**Testimony of George F. Thorndyke, for Plaintiff.**]

GEORGE F. THORNDYKE, recalled on behalf of the plaintiff, testified as follows:

Q. (Mr. CLISE.) Mr. Thorndyke, you were requested yesterday to prepare a list of all expenses which the Globe Navigation Company incurred, incident to the detention of the "Nottingham" at St. Johns, all items not included in the adjustment. Have you prepared such a list? A. I have.

Q. Is it in writing? A. Yes, sir.

Q. Have you the same with you? A. I have.

Q. The paper I hand you contains that list?

A. Yes, sir, it does.

Mr. CLISE.—We offer it in evidence.

Mr. CAMPBELL.—I object as immaterial for the reason that, so far as the statement discloses any other items going to the cost of repairs of the vessel is to be taken into consideration in computing the necessary amount to constitute a constructive total loss under the policy, and that they are neither general average charges nor salvage charges.

Paper marked Plaintiff's Exhibit "Q," filed and returned herewith.

Cross-examination.

Q. (Mr. CAMPBELL.) Now, did you hand an account of these expenses to Johnson & Higgins, whom you employed to make up this general average statement? A. I do not know. [337]

Q. Why don't you know?

A. These are items that may have occurred since we put in our statement to Johnson & Higgins.

(Testimony of George F. Thorndyke.)

Q. When was this adjustment completed?

A. I think sometime in April.

Q. Now, that first item, \$163.70, was expended before the adjustment was completed?

A. Yes, sir.

Q. Did you hand that to Johnson & Higgins?

A. I do not remember.

Q. Do you remember whether they rejected that as a general average demand?

A. I never had any notice that they had rejected it. I do not recollect.

Q. You sent to them all that you considered should properly go into the general average, didn't you?

A. We aimed to send all the expenses and leave them to judge what should go into the general average or particular average. There are items, however, that we failed to do that with.

Q. Did you send these for them to judge of them?

A. I do not remember whether I did or not.

Q. Now, what was that trip for?

A. Consulting the Firemen's Fund in San Francisco, and Laboyteaux.

Q. What about?

A. In connection with the "Nottingham."

Q. What was it you were going to counsel with them about on February 17?

A. I do not remember now, except I know it was in connection [338] with the "Nottingham," when the expenditure was incurred.

Q. You were down there on a trip to settle this

(Testimony of George F. Thorndyke.)

claim with the Firemen's Fund?

A. I do not remember.

Q. Do not remember anything about what expense was for? A. No.

Q. What were you doing nine days in San Francisco?

A. Five days in San Francisco and four days on the road.

Q. What were you doing during those five days?

A. We were consulting with Mr. Levinson and Johnson & Higgins, and awaiting the receipt of telegrams on matters that they were putting up to others or that we might have been putting up to others.

Q. What were these matters?

A. Negotiations in connection with the "Nottingham."

Q. What were the negotiations?

A. Various things in connection with the difficulties that the "Nottingham" was in.

Q. Now, give me a frank answer, don't evade it. You say they were for expenses during the period of negotiations, now what were the negotiations for?

A. Settlement of this loss with the Firemen's Fund?

A. It might have been. I do not remember.

Q. What did Johnson & Higgins have to do with it? A. They were our adjusters.

Q. Consulting them about items that should go into the general average?

(Testimony of George F. Thorndyke.)

A. I told you I did not remember all that was there. I know we made a trip to San Francisco.

Q. Can't you tell me a single thing you did during the [339] five days you were in San Francisco and four days on the trip?

A. Yes, I consulted as to things about the "Nottingham" disaster; that was the only thing I was in San Francisco for.

Q. Name me one thing you consulted with anybody about?

A. I would not attempt to say at this time. We had the matter of settlement, the whole adjustment of this case up with Levinson in San Francisco, and we made two trips there. Whether that was the time we had it up in connection with the whole case or the next time I do not know.

Q. Where are the expenses of your trip?

A. I do not know.

Q. You handed them in to Johnson & Higgins, didn't you? A. The adjustment will show.

Q. Don't you recollect?

A. I do not know but I submitted both of them to Johnson & Higgins.

Q. If they had they repudiated these as a general average charge?

A. It has not been paid to us; that is an incurred expenditure and has not been paid to us; we have not recovered for it. It stands on our books unpaid, and it is in connection with the "Nottingham."

Q. Is it not a fact you went to San Francisco in an effort to induce Levinson representing the Firemen's

(Testimony of George F. Thorndyke.)

Fund to pay the loss under the policies?

A. I do not think we ever asked Levinson to pay the losses on the policies. [340]

Q. You never made demand on them to pay the losses on the policies?

A. Not in the way you are now putting the question.

Q. What were you doing down there?

A. I told you that I was there in connection with the business of the Globe Navigation company on the "William Nottingham."

Q. That is very general in its terms. Cannot you give me one specific piece of business that you went there for?

A. Why yes, I suppose we were there to get an adjustment of the whole case of the "William Nottingham."

Q. When you mention an adjustment of the whole case you mean a settlement of the insurance?

A. We naturally wanted a settlement of the insurance, and I suppose we discussed that with him.

Q. Don't beat around the bush. Answer frankly, was it not for the purpose of settling the insurance?

A. I do not recollect, Mr. Campbell.

Q. Now the next item, \$24.28 Johnson & Higgins balance account, our one-sixth.

A. When the minutes came from San Francisco, came to pay the Port of Portland claim against the "Nottingham" for their portion, the portion they agreed to pay, it exceeded their portion was \$24.28,

(Testimony of George F. Thorndyke.)

and we received the full amount and we returned \$24.28 to them.

Q. To whom?

A. Johnson & Higgins, to be given the underwriters.

Q. This \$24.28 was money you received from San Francisco and you sent it back to San Francisco, to Johnson & Higgins? [341]

Mr. CLISE.—We consent that that item be stricken.

A. Yes, sir.

Q. Now, what are these expenses of yourself to Portland on May 4, 5, and 6th?

A. They are all in connection with the "Nottingham"

Q. I suppose so or you would not have handed them in. But what were they for? Was not that an expense that you incurred when you went to Portland in an effort to settle this case with Mr. Page and Captain Crow and Captain Gibbs and Mr. Walker? A. No.

Q. It was not? Well, what was it for?

A. I think it was probably at the time we went over and made a survey. I went along.

Q. Well, was not that the purpose you went down there for?

A. It was in connection with the "Nottingham," the complications surrounding the "Nottingham."

Q. Endeavoring to reach a settlement with the Firemen's Fund, was it not?

A. Well, I did not consult with the Firemen's

(Testimony of George F. Thorndyke.)

Fund, he was their surveyor.

Q. Was not Page representing the Firemen's Fund?

A. In taking up data, there was nothing in connection with the settlement.

Q. You discussed the matter with Page, didn't you? A. Settlement?

Q. Settlement of the case?

A. No, I did not discuss a settlement of the case with Page in my life.

Q. Did not this trip to Portland occur after the night [342] conference we had in Mr. Clise's office when you people were trying to adjust a difference between Captain Crow and the two surveyors? Was not the trip made immediately following the conference in Clise's office where we were trying to adjust the loss with the Firemen's Fund?

A. Well, we went down for the purpose of having Captain Gibbs and Mr. Walker take up the difference between Captain Crow and Mr. Walker.

Q. Did you hand that item in to Johnson & Higgins to pass upon for the general average?

A. I do not remember.

Q. Well, if you did, they rejected it, didn't they?

A. I have no notice of their rejection.

Q. Well, you see it is not in the general average adjustment? A. I do not know whether it is.

Q. Why did you hand this statement in, with the preliminary statement that these items are not contained in the general average adjustment?

A. I will withdraw that answer. I know it is not

(Testimony of George F. Thorndyke.)

in the adjustment. These items appeared on the books and we have not been reimbursed.

Q. You want to get the money back from somebody? A. Yes, sir, the underwriters.

Q. If you had considered it a general average matter you would have handed it in to Johnson & Higgins for adjustment, would you not?

A. But I never seek to decide these matters.

Q. Did not you hand it in to them for their consideration? [343]

A. I am to hand everything that we know to exist in the way of expenditures.

Q. How long were you in Portland that trip?

A. It states here trip included May 4th, 5th and 6th.

Q. What is the fare over to Portland?

A. Seven dollars and sixty cents including berth.

Q. That is fifteen dollars for the round trip, and you were there one day, were you not?

A. I was there the 4th, 5th and 6th.

Q. You were in conference with the Firemen's Fund representative one day, were you not?

A. I do not remember that.

Q. Don't you remember our meeting you in the morning and going down to the vessel and our leaving for San Francisco that night, and your returning home?

A. No, I don't think I came back that night.

Q. What did you stay there for?

A. I do not remember now.

Q. Did Mr. Walker accompany you?

(Testimony of George F. Thorndyke.)

A. I think he went over with me. I do not remember whether we came back together or not.

Q. Where are his expenses that you paid for him on that trip?

A. I do not know. I guess they are in his bill of seven hundred and fifty dollars.

Q. In the general average? A. Yes.

Q. They were included in the bill he rendered that you sent to San Francisco to Johnson & Higgins for their consideration in the general average?

A. Yes, he has an item of \$750.

Q. Which includes this service and this expense?
[344]

A. Yes.

Mr. CLISE.—Do you know?

Mr. CAMPBELL.—I object to counsel interfering with the witness while I am cross-examining.

Q. If you sent Walker's bill, expenses, down to Johnson & Higgins for their consideration as to whether they should go in the general average, why didn't you send this one down?

A. I do not know unless it is an omission on my part.

Q. You do not remember whether you did or did not, do you?

A. I do not know. Johnson & Higgins may have had that bill. It has not been paid and has not been allowed.

Q. At that time the cargo was all out of the vessel and the salvage charges were paid and disposed of, were they not?

(Testimony of George F. Thorndyke.)

A. Yes, the vessel was lying there.

Q. The vessel was lying at the Port of Portland, was she not? A. At St. Johns.

Q. And all that remained unsettled between you and the Firemen's Fund was the question as to whether or not they were liable on their policies for the total loss of the vessel. Is not that true?

A. I suppose that is true.

Q. Well, is it not true?

A. I do not know.

Q. Was not the cargo out of her and all disposed of?

A. The cargo was discharged from her before she was drydocked and put in storage there.

Q. Turned back to the owners; the owners had taken [345] the cargo over? A. Yes, sir.

Q. You had settled the salvage claims with the Port of Portland?

A. Yes, we had settled the salvage claims with the Port of Portland.

Q. And all that remained was the dispute between the Firemen's Fund and yourselves as to the question of the loss under the policy for constructive total loss of the vessel?

A. I do not know as to that.

Q. What else remained?

A. I do not know what may have remained.

Q. You are manager of this company are you not?

A. Yes, sir.

Q. Cannot you remember? A. No.

Q. Why cannot you remember?

(Testimony of George F. Thorndyke.)

A. Well, because I have not looked up that particular part, looked into that particular question as to whether there was some outlying matters in connection with that case aside from our claim against the Underwriters for the whole policy. There were many other things, doubtless there were other things besides the whole policy matter.

Q. Did you have these items up with the Firemen's Fund as to whether they should pay them or not?

A. I do not know. They have not been paid. We have not recovered them.

Q. Now, your suggestion then that possibly these items were up for discussion, was simply a momentary thought at [346] just the moment, was it not?

A. Naturally, I am thinking now what we are talking about.

Q. You are not basing your answer on a recollection of what the particular items were for?

A. No, only that I know that I am here testifying these items were incurred on account of the disaster to the "Nottingham" in October, 1911.

Q. They were not items for repairs, were they?

A. No.

Q. Is it not a fact that all that remained at that time was the question whether or not the Firemen's Fund was liable to you under their policies?

A. No more so than it is today a question.

Q. Admitting that, was it not at that time the question that remained between you?

(Testimony of George F. Thorndyke.)

A. Well, I can only say that it is my opinion the Firemen's Fund is liable to us for the face of the policies and the expenses that I have incurred.

Q. That does not enlighten us any. That was the purpose of towing her from Astoria to St. Johns, but the trip was for the purpose of finding out what her repairs would cost so as to ascertain whether or not you had a claim against the Firemen's Fund, was it not?

A. Why, I don't remember. I think the towing of the vessel to St. Johns was done for the best interest of all concerned.

Q. We admit that. But, admitting that now, was not the purpose of it to enable you to ascertain the extent of the damage to the "Nottingham" and the cost of repairs so as to further ascertain whether you had a loss under [347] policies?

A. Naturally we had to take the vessel and dock her in order to learn the extent of her damages.

Q. Was not that the purpose of doing that?

A. Certainly.

Q. So as to ascertain whether you had a loss under your policies?

A. No, I do not know that we went into the thing to that extent, Mr. Campbell, at that time.

Q. Now, don't you know, Mr. Thorndyke, that that was the purpose, to enable you to ascertain whether you had a loss under your policy or not?

A. No, I don't know that that was; the first thing in my mind we wanted to get the vessel up there and survey her and see the extent of the damage.

(Testimony of George F. Thorndyke.)

Q. For what purpose?

A. The purpose was—it was agreed and desired by all concerned that that should be done.

Q. For what purpose?

A. I supposed the purpose was to see if the vessel was in and to see if it was a total loss.

Q. Under her policies? A. Yes.

Q. And it was for the purpose of ascertaining whether or not you had a claim under your policies against the Firemen's Fund? A. Naturally.

Q. Now, your next item, \$4.05 is for coal oil. When was that expended?

A. That was expended while she was at St. Johns.
[348]

Q. She was at St. Johns nearly nine months of the time during that period.

A. It was prior to July 1st.

Q. Subsequent to May 4th?

A. Prior to July 1st, 1912.

Q. She went to St. Johns the first of December?

A. Yes, sir.

Q. What time in that interim was it?

A. I should judge it might have been in April or May.

Q. After the cargo was out of her?

A. It might have been incurred in June.

Q. After the cargo was out of her? A. Likely.

Q. And the salvage charges all paid to the Port of Portland? A. That is likely.

Q. Why was it you did not put down on this bill

(Testimony of George F. Thorndyke.)

the date of that expenditure when you itemized the others?

A. There was no reason, for you stated yesterday that you did not require receipts, that if I stated that the bill was incurred you would be satisfied, and I did not put the date down here because I did not know that it would be required.

Q. I do not question, Mr. Thorndyke, your word, when you say you spent a certain amount of money. But I ask you now as to the time you spent it.

A. I cannot tell without recourse to the vouchers.

Mr. BOGLE.—We can produce the vouchers. We understood as the witness did that counsel did not want the vouchers or the details. That is the reason I did not ask the witness to have them. If you desire them we will produce them. [349]

Mr. CAMPBELL.—I would like to know the date and what the coal oil was for.

Q. What was this long distance telephone in May?

A. I had that the other day. I did not know that you wanted it. I was telephoning to of Brown & McCabe to reach the captain, we wanted to consult the captain.

Q. Was the captain on board the "Nottingham" in May?

A. No. Maybe I wanted the watchman.

Q. Did you have a watchman employed on the "Nottingham" in May?

A. Yes, we had a man supposed to be looking after the "Nottingham" in May.

Q. You cannot recall what that was for?

(Testimony of George F. Thorndyke.)

A. I do not recollect what it was for.

Q. You do not know whether it was a telephone to look up—

A. I looked it up before, it was Brown & McCabe, something in connection with the “Nottingham.”

Q. They are stevedores in Portland?

A. Yes, sir. I had no other business in Portland at that time.

Q. What was this telegram?

A. I can get vouchers for that and show you. I do not remember.

Q. Do you recollect what it was about?

A. No, I certainly do not, but it would not be in there unless it was in connection with the “Nottingham.”

Q. What is the next item?

A. The next item is salary F. P. Harlow, watchman, June 18th to June 30th, inclusive, \$32.50.

Q. Where are the expenditures for the watchman prior to June 18th? [350]

A. There were none.

Q. You did not have any?

A. We did not have any for watchman, not until the time Harlow was watchman. The other watchman got drunk, and I did not think he was entitled to any pay and did not allow him any. He was derelict in his duty and I did not think he was entitled to any pay and I did not allow him any.

Q. What time?

A. I think it was May and June.

Q. Because he was drunk during that period you

374 *Fireman's Fund Insurance Company vs.*

(Testimony of George F. Thorndyke.)

did not allow him anything for his salary?

A. He was derelict, I should say, I will change that from drunk.

Q. He was on duty between the 18th and 30th of June?

A. He was not. He was on until I sent Harlow down from Seattle there was no watchman on the vessel. And this man that had been appointed as watchman was derelict in his duty and was not watching the vessel and I sent a man down from here to take his place, and he never had the nerve to put in a bill for services.

Q. And this man that you sent down, this man Harlow is the man you sent down?

A. Yes, I sent him down from here.

Q. June 18th? A. Yes.

Q. At that time the only remaining dispute between you and the Firemen's Fund was as to their liability under their policies, was it not?

A. I must admit that this is a little too deep for me. I do not know whether that is a fact or not.
[351]

Q. You are manager of this company?

A. Yes, sir. I know we were claiming the amount of our policies and expenses incurred. Whether or not at that time there were other things beside the policies, the face of the policies, outlying, I do not know.

Q. Did the fireman's Fund Insurance Company authorize you to employ a watchman? A. No.

Q. You never did consult with them about that,

(Testimony of George F. Thorndyke.)

did you? A. No.

Q. You never told them that you had a watchman?

A. No, I never discussed the matter with the Firemen's Fund.

Q. What was the expense of cleaning up the ship? When were these incurred?

A. As soon as Harlow went aboard.

Q. About the 18th of June? A. Yes.

Q. What do you mean by cleaning the ship?

A. The cabins where he had to be domiciled, up to that date, the cabins had never been cleaned. There was a lot of flour and paste and stuff on the decks, and it was in an unsanitary condition. The state-rooms were in an unsanitary condition, and so he decided to get some men to put them in order so that he could live aboard the vessel.

Q. You did not consult with the Firemen's Fund about that? A. No.

Q. They did not know the cause of your doing it?

A. No, we went ahead and did it ourselves.

Q. You paid \$16.60 for the purpose of cleaning out the cabin so that he might live in it? [352]

A. Well, not only the cabin but the galley and the sleeping quarters and the living quarters of the vessel and pantry.

Q. Where he was living?

A. Where he was living, yes. He had his family aboard with him, and he had to put them in shape to live there.

Q. Who was it that told you that Mr. McIntosh was the man who fell down on the repairs of the

(Testimony of George F. Thorndyke.)

“Beachley,” which you communicated to Mr. Clise some three months after the original specifications were put in and the bids rendered?

A. I do not remember now who I consulted with.

Q. I suppose that it is correct that you did not get any confirmation of that report?

A. Since that, I would state recently that I found that whoever informed me about that might have been mistaken, for the reason that I understand that Mackintosh did not have the contract on the “Beachley.”

Mr. CAMPBELL.—Now, Mr. Clise, for the purpose of saving the taking of depositions in Portland, will you admit that Mr. Mackintosh had nothing to do with the “Beachley,” that the contractor who fell down on the job was a man named Kelley, acting under the name of the Puget Sound Ship Building Company?

Mr. CLISE.—Yes, sir.

Q. So that this reflection you had in this letter based upon the “Beachley” was entirely unfounded?

A. I understand that the fact as given me was unfounded, but I had the information in the way I communicated it to Mr. Clise.

Q. But you say you did not attempt to confirm it by any one in authority? [353]

A. I suppose not, seeing that I did not go to Mackintosh and ask him if he fell down on that contract.

Q. You did not make any inquiry of anybody else that knew, did you? A. I do not remember now.

Q. You admit now that you were entirely wrong?

(Testimony of George F. Thorndyke.)

A. I admit my informant must have been wrong, for I understand that Mackintosh had no contract on the "Beachley," and a man named Kelley did have.

Q. You testified yesterday that in consideration of the consent of the insurance company to reduce the insured valuation from \$55,000 to \$45,000 you took out insurance on the "Nottingham" in the sum of thirty thousand dollars, did you not?

A. That is as I remember it.

Q. Now, was there any difference in the value of the "Nottingham" between the date of her loss and damage in October and the April following?

A. Why, naturally a vessel deteriorates.

Q. If she had been in sound condition, would she have been worth practically the same amount of money in April, 1912, that she was in October, 1911?

A. If she had been in sound condition in April, 1912, she would have been worth more money than she was in October, 1911.

Q. In wrecked condition?

A. I said in sound condition.

Q. She would have been? A. Why, certainly.

Q. Now would she have been worth more in October, 1911, than she was in April, 1911? [354]

A. Yes, the things to work with, the machines to work with. I think she would have been worth more money.

Q. With what?

A. As an implement to work with. Rates and conditions, as I remember, were better in October than in February.

(Testimony of George F. Thorndyke.)

Q. Then you would consider her value in October, 1911, more than in April, 1911?

A. In sound condition, yes.

Q. In sound condition?

A. As I remember it.

Q. And from October, 1911, onward into the summer of 1912, the fall of 1912, vessel property was gradually going up, was it not?

A. I think so, yes.

Q. Then in December and January, 1911, and 1912, she would have been worth more in sound condition than she was in October?

A. I do not remember. I think things commenced to turn about that time. There was a period when rates advanced very materially and vessels were worth more than at low rates.

Q. Is it not a fact that freights began to go up in the fall of 1911 and continued to go up through the winter and spring and into the summer?

A. I do not know that that extended into the summer, Mr. Campbell. I think regarding the winter and spring is all right. I guess that the rates did continue up in the summer time.

Q. Then the rates were increasing from the fall of 1911 on up into the summer of 1912?

A. Yes, sir, I think so. [355]

Q. Then the vessel was worth more in December and January than she was in the fall of the year, in October, was she not? A. What year?

A. 1911—1912 we are speaking of. December, 1911, and January, 1912. It was gradually increas-

(Testimony of George F. Thorndyke.)

ing and would gradually increase in value if she had been in sound condition?

A. Yes, sir, she should. She ought to.

Q. Not only ought to but she would as a matter of fact, if she had been in sound condition?

A. Well, it depends on her position and all about it. There are a good many things to depend on. If she was in Australia or where the rates were not available, it would be different than if she was here on this coast. If she was here and in sound condition it ought to have been more, and naturally would have been in October than in April, 1911.

Q. Notwithstanding, then, in April, 1911, when you took out this insurance with the Firemen's Fund—

A. No, I will change that, in October, 1911.

Q. What is it that caused you to change your former statement?

A. That is two years ago. I am just trying to recollect the conditions, that is all, as they existed. I guess that she would have been worth more money in October than she would have been in April of that same year.

Q. And from that time on until the next summer she would have gradually increased in value as the rates continued to go up?

A. Yes, sir, but now unfortunately they are going down.

Q. She would have gradually increased in value in sound condition? [356] A. I think so.

Q. Now, when you went to place that insurance with the Firemen's Fund direct, were there any

(Testimony of George F. Thorndyke.)

other conditions attached to the change in character of the insurance other than the reduction in value and the increasing of the amount of insurance?

A. I do not remember anything else.

Q. Now, during the period you were insuring with the Firemen's Fund, you, in your own mind, were taking out the same character of insurance that you had in the preceding years during its placement by Johnson & Higgins?

Mr. BOGLE.—I object as incompetent, irrelevant and immaterial, the contract speaks for itself.

A. I supposed I was getting the benefit or I would not have changed from Johnson & Higgins and gone to Taylor of the Firemen's Fund.

Q. You understood that you were getting the same character of insurance, did you not?

Mr. BOGLE.—I renew my objection.

A. Yes, I thought we were getting total loss insurance.

Q. There was no discussion between you, that you can recollect of, of a change in the terms of insurance? A. No, I do not remember now.

Q. From the time— A. Except the valuation.

Q. Excepting the valuation, but that was the only change that was made in the character of insurance when you began to place it direct with the Firemen's Fund and continued to do so, and the insurance which had been procured for you by Johnson & Higgins? [357] A. I do not recollect anything.

Q. Now, during all that period you were insuring your vessels against total, constructive total loss

(Testimony of George F. Thorndyke.)

and general average and salvage charges, were you not?

Mr. BOGLE.—I object, the contract is in writing and speaks for itself.

A. My recollection is that the policies prior to the two sets of policies the Firemen's Fund gave us, did not have a typewritten clause in the margin covering the question of warranty.

Q. Contained here?

A. As I remember it. It may be that some policies had it but some may be did not have it.

Q. You cannot recollect?

A. I can recollect one policy of the Firemen's Fund there was a blank line stamped right on the margin.

Q. On the margin?

A. Yes, sir, prior to this time.

Q. That was during the days you were carrying insurance average?

A. I do not think so. I think after that we agreed on the five per cent average a long time ago when the vessels were first built.

Q. What was your reason for changing from Johnson & Higgins to the Firemen's Fund direct?

Mr. BOGLE.—I object as incompetent, irrelevant and immaterial.

A. Why, I cannot think of any special reason except that I thought it would be as well to do business through Taylor as through brokers.

Q. You went to Taylor and said you wanted the same character [358] of insurance except as to

(Testimony of George F. Thorndyke.)

the valuation and change in the amounts?

A. We had several interviews and Mr. Taylor fixed the values.

Q. Did the interviews pertain to the questions of value in dispute, as to the valuation of the vessel?

A. I do not know that Taylor and I ever had any dispute as to the matters we conversed about.

Q. The conversations were about what?

A. The topic of conversation was that he had the insurance to sell, and these valuations.

Q. Except for the change of valuations you were seeking the same character of insurance that you had had through Johnson & Higgins?

A. As I remember it.

(Witness excused.) [359]

[**Testimony of H. R. Clise, for Plaintiff (Recalled).**]

H. R. CLISE, recalled on behalf of the plaintiff, testified as follows:

Q. (Mr. BOGLE.) Are you familiar with the trip made by Thorndyke to San Francisco about February 17, 1912, referred to in the first item of exhibit "Q" in this case?

A. Yes, sir, I accompanied Mr. Thorndyke.

Q. What was the purpose of that trip?

A. Immediately after the salvage was settled in Portland, an intimation was made that if we went to San Francisco it might be possible to settle the difference between the Firemen's Fund and the Globe Navigation Company. And we went to San Francisco for that purpose.

Q. Where was the "Nottingham" lying at that

(Testimony of H. R. Clise.)

time? A. I suppose at St. Johns, Oregon.

Q. In whose possession was she?

A. In fact she was in nobody's possession except such acts as were done to preserve the hull as much as possible.

Q. The underwriters had refused to accept your abandonment? A. They had.

Q. And you had refused to recede from your abandonment? A. Yes, sir.

Q. Then up to the time you settled the salvage claim the vessel was in the charge of the United States Marshal under the libel in that case?

A. Yes, sir.

Q. And after that was settled the marshal withdrew and left the vessel in nobody's possession?

A. Yes, sir.

Q. And that was the status when you and Thorn-dyke went to San Francisco on this trip to try to get some adjustment [360] with the Firemen's Fund? A. It was.

Q. And that is the same trip referred to in the last item of exhibit "Q" where your expenses are included? A. Yes, sir.

Q. Do you remember the occasion of Mr. Thorn-dyke's trip to Portland, about May 14th, 1912?

A. My remembrance is that that was taken after the conference in my office, where Mr. Page and Mr. Campbell and Captain Gibbs and Mr. Walker went down there to see if some adjustment could not be made.

Q. Were Mr. Walker and Captain Gibbs on that

(Testimony of H. R. Clise.)

trip to make further inspection of the vessel with a view of reconciling those differences that had arisen between Walker and Captain Crow? A. Yes, sir.

Q. And Mr. Thorndyke went along as the representative of the owner of the vessel? A. Yes, sir.

Q. You know nothing personally of the items of expense? A. I know nothing about that.

Q. Mr. Campbell has asked Mr. Thorndyke about the purpose of bringing the vessel from Astoria to St. Johns. Was that done under your direction or was it through the negotiations which you conducted? A. Yes, sir, it was.

Q. What was the purpose of it?

A. The purpose of placing the vessel in a condition where she could be discharged and drydocked so that all parties could ascertain her condition. And also for the [361] purpose of preserving and making some disposition of her cargo and getting it out of the vessel.

Q. These services were necessary whether there was any liability under the insurance or not?

A. In my opinion, yes, sir.

Cross-examination.

Q. (Mr. CAMPBELL.) I do not understand about the statement of expenses to San Francisco. You say it was on the same trip that Mr. Thorndyke made? A. Yes, sir.

Q. His trip was February 17 to 26th, and yours is February 12?

A. Then it must have been wrong. We were right together. I know we were together down

(Testimony of H. R. Clise.)

there. I think there is some mistake in the date, because we were together.

Q. Anyway that was for the purpose of trying to reach an adjustment with the Firemen's Fund on the question of loss under the policy?

A. It certainly was.

Q. Now, in the last item, Mr. Clise, I see that you have \$248.90 and in that you charge \$150 attorneys fees.

A. I only know what that says. I presume it is correct.

Q. Well, you have been testifying here regarding the account. Don't you know what it is for?

A. Yes, I know part of it is for my expenses and part of it for my fees.

Q. What did you write \$150 in ink for?

A. I did not do it.

Q. Who did? A. I do not know. [362]

Q. It was written in since you came here?

Mr. THORNDYKE.—I wrote that in in the office. I wanted to know the segregation of that account and I got it. I did that in my own office. I thought you would call for a segregation and so I put it down.

Q. You were acting at that time as general counsel for the Globe Navigation Company and owners and also representing the mortgagees of the vessel?

A. Yes, sir.

Q. What does this item of ten dollars—should that not have gone in as part of the salvage claim?

A. I cannot explain that item.

(Testimony of H. R. Clise.)

Q. Marshal's fees \$2.12.

A. I noticed that was there. I cannot explain that. I never saw that until I came here.

Q. By telegrams, \$3.24.

A. I do not know anything at all about that. It has been so long since the bills were rendered.

Q. Clerks fees and marshals fees would only be payable to the officers of the court. A. Yes, sir.

Q. And the only time you were ever in court over this loss excepting in the present suit, was in the salvgae case in Portland? A. That is all.

Q. And the other expenses of the salvage and litigation were charged in the general average, were they not? A. I think so.

Q. You will admit for the purposes of this record that the clerk's fees \$10 and the marshal's fees \$2.12 should [363] be charged in general average with the other salvage suit expenses?

A. It should have been, yes.

Q. This give or take offer that we have been stipulating about was over and above the salvage expenses on the vessel, that is to say the give or take offer of five thousand dollars was give or take for the vessel free and clear of all salvage charges?

A. Yes, sir. That was made after the salvage charges had been made and had no reference whatsoever to the salvage charge one way or the other.

Q. And was after the vessel was free of all liens which resulted from the disaster. A. Yes, sir.

(Witness excused.)

It is stipulated that the date of February 12 in

(Testimony of H. R. Clise.)

the H. R. Clise item of expense at the bottom of exhibit "Q" is an error and should be February 17th.

It is stipulated that the expenditure for coal-oil amounting to \$4.05 is under date of February 5, 1912, and the coal-oil was used to maintain lights aboard the vessel as required by law, and for use by the watchman.

(Hearing adjourned.) [364]

Seattle, July 31, 1913.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

DEFENDANT'S TESTIMONY.

[Testimony of S. B. Gibbs, for Defendant.]

S. B. GIBBS, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) What is your full name?

A. Stephen B. Gibbs.

Q. How old are you? A. Fifty four.

Q. Have you ever been a master mariner?

A. I have.

Q. For how many years? A. About eighteen.

Q. In what class of vessels? A. Sailing ships.

Q. How did their type compare with the type of the "Nottingham"?

A. They were a little different type. I think the last one was partly rigged like the "Nottingham."

Q. Were the vessels engaged in the same class of trade as the "Nottingham"?

A. Yes, occasionally.

Q. Wooden vessels? A. Wooden vessels.

(Testimony of S. B. Gibbs.)

Q. What is your present business?

A. Agent and surveyor for the San Francisco Board of Marine Underwriters.

Q. How long have you been such? [365]

A. About 11 years and 6 months.

Q. At what ports? A. Seattle.

Q. Over what territory does your jurisdiction extend?

A. Over the whole of Puget Sound and Alaska.

Q. What are your duties as such surveyor?

A. To survey damages to vessels, load and fit vessels.

Q. Did you ever have occasion to survey and repair damaged vessels? A. I have.

Q. How many damaged vessels do you suppose you have surveyed in the last eleven years?

A. That would be very hard to say. Probably four or five hundred.

Q. Did you at any time obtain from Hall Brothers an estimate of the cost of removing the wash strakes on both sides of the "Nottingham," from the break of the poop to the break of the forecastle-head, and caulk the back of the bulwark stanchions?

A. I did.

Q. Is that estimate of theirs in writing, to you?

A. Yes, sir.

Q. Have you it with you? A. I have it.

Q. What estimate did they give you?

A. \$275.50.

Mr. CLISE.—I object, it is not the best evidence.

Mr. CAMPBELL.—I offer the letter in evidence.

(Testimony of S. B. Gibbs.)

Paper marked Defendant's Exhibit "8," filed and returned herewith.

Q. Did you hear Mr. Walker's testimony this morning with [366] respect to the modification that should have been made in the work to be done under the Hall Brothers' bid for the cost of removing the wash strake, being item number 6 in exhibit "K"?

A. I do not remember just what he said about that. I would not want to say.

Q. Would the work which Hall Brothers have stated that they would do for \$275.50 in their letter marked exhibit "8" be, in your judgment, a compliance with their specifications in Walker's supplemental report exhibit "J," providing as follows: "Remove the lower bulwarks planks or wash strake on each side for their full length, caulk at back of same and renew planks." Modifying that as Walker did, that full length only meant from the break of the poop to the break of the forecastle-head?

A. The specifications as they read there call for the renewal of the strake there for the whole length of the ship. This only calls for a renewal from the break of the poop to the break of the forecastle. It is different entirely.

Q. Is the work which Hall Brothers agree to do on the estimate of \$275.50 the same work that would have been required to have complied with the specifications in Walker's supplemental survey, providing that the survey only called for the removal of the bulwarks planks or wash strake on each side of the

(Testimony of S. B. Gibbs.)

vessel from the break of the poop to the break of the forecastle-head, caulk it back of seams and renew planks? A. Just the same.

Q. The only difference is that the original specifications [367] drawn by Walker called for wash strake all around the vessel, and the bid of Hall Brothers to you was from the break of the poop to the break of the forecastle-head? A. Yes.

Q. I will ask you if that is your signature attached to exhibit "5a"? A. It is.

Q. Do you recollect going to Portland in May, 1912, and visiting the "Nottingham" as she lay at the St. Johns Drydock, in company with Captain Crow and Charles Page? A. I do.

Q. Will you state whether or not at that time any measurements were taken by you of the lineal feet contained in the deck seams recommended by the original specifications to be caulked?

A. There were.

Q. State whether or not the measurements that you took included 4 deck seams on each side of the waterways on both sides of the vessel, around the hatch coamings and one seam the full length of the vessel alongside of each side of the hatch coamings?

Mr. CLISE.—I object as leading and suggestive.

A. I took measurements of all seams on deck and around hatch coamings called for by the specifications.

Q. Which specifications?

A. Original specifications.

(Testimony of S. B. Gibbs.)

Q. Did you make a record at that time of the figures?

A. I gave the figures to Mr. Page and he made a note of them. I did not keep that myself.

Q. Was Page present when you made the actual measurement of [368] the deck seams?

A. He was.

Q. State whether or not you saw Page make a record of them? A. I did.

Q. Have you any present knowledge of what the total lineal feet amounted to?

A. Only from memory. About 17,000 on the main deck.

Q. Is Captain Crow dead? A. He is.

Q. When did he die?

A. About three months ago.

Q. Did you at that time make any estimate of the lineal length of the seams on the outside of the vessel?

A. I did.

Q. Did you make any record of these figures at that time?

A. I gave the figures to Mr. Page and he made a record of them.

Q. State whether or not Page was present at the time the measurements were actually made by you?

A. He was.

Q. Did you at that time, or at any other time, examine the seams around the stern post of the "Nottingham"? A. I did.

Q. In what condition did you find the seams to be?

A. I found the oakum entirely out between all the

(Testimony of S. B. Gibbs.)

hood-ends under the stern post, about the 20 foot draft.

Mr. CLISE.—I suppose all this testimony applies to the one time that he made this examination?

Mr. CAMPBELL.—Yes, sir.

Q. This was about the first of May? [369]

A. It was the second day of May we went over there.

Q. What was the condition of the seam between the ends of the plank and the stern frame of the vessel where the planking rebated on to the stern frame?

A. That is what I was speaking of. That is where we found the oakum out, at the hood-ends where the plank butts on to the stern post.

Q. On which side was that?

A. On the port side.

Q. At what draft of the vessel?

A. About 20 foot draft.

Q. Was there any notation made by you at that time of the draft at which this oakum seam was found? A. Yes, sir, we measured it.

Q. Did you make a record of it?

A. No, I did not, Mr. Page took a record of it.

Q. Was he present at that time? A. He was.

Q. Did you at that time do anything by which you could ascertain the condition of that seam?

A. I put a rule in the seam to see whether there was anything in it or not.

Q. What did you find?

A. I found nothing in it.

(At this time a recess was taken until 1:30 P. M.)

July 31, 1913—AFTERNOON SESSION.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

S. B. GIBBS, on the stand for further direct examination.

Q. (Mr. CAMPBELL.) Do you recollect how far into the seam you could insert the rule?

A. About six inches.

Q. Can you show me on exhibit 3 about where that seam was? You have testified the seam was on the port side, and this exhibit shows the starboard side of the vessel.

A. It is at the 20-foot mark. It would be about 4 inches above the 20-foot mark.

Q. Mark with a cross the corresponding position on the starboard side.

(Witness does so.)

Q. Now, the seam about which you have been testifying was on the port side? A. On the port side.

Q. About the position marked with the X on the starboard side of exhibit 3? A. Yes, sir.

Q. Now, I will hand you another photograph and ask you whether or not that is a photograph which shows the seam in question? A. It does.

Mr. BOGLE.—When was that photograph taken?

Mr. CAMPBELL.—That was taken by Captain Gibbs on his visit May 6th. They were all taken at the same time. [371]

Q. What is there inserted in the seam in the photograph? A. A two-foot rule.

(Testimony of S. B. Gibbs.)

Q. How did the insertion of the rule made by you correspond with that shown by that on the photograph? A. Just about the same.

Q. Did you examine the water-closet flange on the port side of the vessel? A. I did.

Mr. CAMPBELL.—I offer the photograph identified by the witness in evidence.

Photograph marked Defendant's Exhibit "9," filed and returned herewith.

Mr. BOGLE.—Is this with a view of establishing a claim that she was unseaworthy? Are you making such a claim as that?

Mr. CAMPBELL.—I do not know whether we will make that claim or not. It depends on how the testimony develops.

Mr. BOGLE.—I object as incompetent, irrelevant and immaterial; not pertinent to any issue made in the pleadings in this case. If there is to be a defense of unseaworthiness I want it set up in your pleadings so that we can address testimony to it.

Mr. CAMPBELL.—I might say, to be perfectly frank with you, that the evidence which has very recently come in our hands makes it very likely that we will take that position.

Mr. BOGLE.—Then we ought to make the pleadings up before the taking of testimony. We do not want testimony taken on other issues and then have it sprung on us later.

Mr. CAMPBELL.—I do not intend to spring it on you. I am not in a position to allege unseaworthiness at the present [372] time. I am not advised

(Testimony of S. B. Gibbs.)

myself at the present time of facts to support the charge of unseaworthiness, but I believe it will be adduced from the master of the vessel, from the statements which have been made here during the examination which point to that fact.

Mr. BOGLE.—Then I renew my objection at this time: That it is not addressed to any issue made in the pleadings in this case, and if it is intended to be addressed to some issue to be made in the future, I object to it as premature, and taken at a time when we are not able to determine its competency or relevancy to that issue.

Mr. CAMPBELL.—I will give notice now that if the testimony produced in the case develops an unseaworthiness of the vessel on sailing, that I shall ask leave of the Court to amend my pleadings to conform to the proof. This testimony that I am seeking now not only goes to that proposition, so far as it may bear upon it, but also to the further contentions being made in this case as to the necessity of certain caulking recommended by Mr. Walker three months after his original specifications were drawn.

Q. I hand you another photograph and ask you whether or not that shows the location of the water-closet flange on the port side? A. It does.

Q. Mark on it the water-closet flange.

(Witness does so.)

A. The crack shows.

Q. Mark the water-closet flange with a W.

A. I have. [373]

Mr. CAMPBELL.—I offer this proof in response

(Testimony of S. B. Gibbs.)

to the statement in Mr. Walker's supplemental survey report which refers to concealed leakage: "The vessel contains a concealed damage in the shape of serious leakage, which so far has not been accounted for, and judging from the master's sworn statement only makes itself apparent under certain conditions." We will later account for the reasons of the conditions and the appearance of the leakage coming through the seams in question shown by the photographs. I offer this photograph in evidence and ask the commissioner to paste over the back of this photograph a heavy sheet of paper which will obliterate the notations made there, unless counsel is willing it shall go in in its present form.

Photograph marked Defendant's Exhibit "10," filed and returned herewith.

Q. What was the condition of the water-closet flange, Captain Gibbs?

A. Crack in the lead flange.

Q. What is the flange?

A. The soil-pipe leading from the side of the ship, the outside edge is the flange over the inlet to the planking.

Q. In your judgment would that crack admit water into the vessel? A. It certainly would.

Q. Where was that with respect to the load line of the vessel? A. Below the load line.

Q. Captain, assuming that the schooner "William Nottingham," when she left the bar of the Columbia river and got on to [374] the Pacific ocean, stood offshore on a port tack, and she was at that time

(Testimony of S. B. Gibbs.)

drawing 21' 4", and that the crack along the stern frame, the seam along the stern post, was at the 21-foot mark, and the vessel encountered any breeze sufficient to give her headway, I will ask you whether or not in your judgment the vessel would list to starboard sufficiently to lift the seam along the stern frame out of the water, so as to lessen the leak through that seam?

A. Yes, she would if she had any breeze at all.

Q. What do you mean by saying that the vessel is on the port tack?

A. When the wind is on the port side they say the wind is on the port tack.

Q. With the schooner "Nottingham" on the port tack, which way would the wind be coming across her, from port to starboard or starboard to port?

A. The wind would be coming over the port side.

Q. What effect would that have on the vessel maintaining an even keel?

A. Depends on the strength of the wind. The further ahead the wind was the more she would lie over, of course the stronger the wind.

Q. If, at the time, the "Nottingham" was proceeding on the port tack under a good sailing breeze, would she, in your judgment, have been listed over to the starboard sufficiently to have lifted the seam out of the water? A. I think she would.

Q. Under these circumstances would any water get through the seam into the vessel, in your judgment?

A. Yes, there would be some water coming in when

(Testimony of S. B. Gibbs.)

on the port [375] tack, the sea would send some water in.

Q. If, after proceeding upon that tack the vessel was put upon the starboard tack, under a good sailing breeze, what effect would it have upon the seam in question as to its being lifted out of the water or forced under water? A. Forced under water.

Q. If this seam in question was open at the time she was proceeding upon that port tack, and she was put upon the starboard tack, what, in your judgment would be the effect upon the comparative leakage of water into the vessel through the seam?

A. It would be increased considerably.

Q. When?

A. When she was put on the starboard tack.

Q. If the "Nottingham" first proceeded upon the port tack and then upon the starboard tack, with the seam in question open, how would that affect the amount of leakage into the vessel, compared, in your judgment, with the following statement: "Shortly after leaving Astoria with the schooner 'William Nottingham,' I found that she began to leak more than usual, and had to pump one hour out of four. Wind blowing from the south and the vessel on the port tack. I stood off to about longitude 128 west, when the wind hauled somewhat to the west of south, and I put the vessel on the starboard tack. When this was done I found the leak increased to such an extent that the hand pump was not able to keep her free. I started the steam-pump, which failed to work."

(Testimony of S. B. Gibbs.)

A. Well, that would prove that that leak was on the starboard side. [376]

Q. Where does a vessel first show evidence of strain?

A. I look for strains at the throats of her knees, at the ends of her knees, between decks and the stanchions, or rather in the hold.

Q. What do you mean by knees?

A. The knees are natural crooked roots of trees, put in at the end of the beams and fastened there to the frames. One end fastened through the deck beams and the other portion fastened through the ceiling and through the frames.

Q. It is a bracket-like piece of wood which holds the beams in place to the frames of the vessel?

A. Yes, sir.

Q. Where else would you look for the first evidence of strain?

A. I would look along the waterways, hatches, mast partners.

Q. Did you examine this vessel to see whether she showed any evidence of strain around the knees or other places? A. I did.

Q. What did you find?

A. I did not find any evidence of strain.

Q. Was there any evidence of strain about that vessel that you found, which would indicate that she had strained sufficiently to loosen the oakum in her outside seams between the planking or caulking cement? A. No, I did not.

Q. When did you first see the vessel?

(Testimony of S. B. Gibbs.)

A. Second day of May, 1912.

Q. Captain, what effect upon the outside planking of the vessel would exposure to the weather without care have? A. Shrink up. [377]

Q. What appearance would that give to the cement in the seams? A. Show a crack in the cement.

Q. Whereabouts in the cement?

A. On the sides of the cement, fore and aft.

Q. Between the cement and the plank?

A. Between the cement and the plank.

Q. State whether or not you noticed any such condition existing at the time you saw the sides of the vessel in May. A. I did.

Q. Captain, what would be meant by this provision in the original specifications: "Before ship is again placed in water, entire planking of hull to be searched for leaks with hose on inside"?

A. It would mean that they would put the nozzle where the air strakes were on both sides of the ship for the purpose of discovering the leak, by the water coming through the outside plank.

Q. What do you mean by air strakes?

A. Air strakes are places located in the ship's ceiling to ventilate the plank.

Q. What is the ceiling of the vessel?

A. The ceiling is the planks that are put in, timbers on the inside bolted over the frame, to give the ship her strength. That is where she gets her strength, from the ceiling.

Q. What can you say as to whether or not whether the watering of a vessel in the manner prescribed by

(Testimony of S. B. Gibbs.)

the specifications is or is not a customary manner of testing a vessel for leaks?

A. It is customary. [378]

Q. In your judgment would any competent ship repairer understand the meaning of such a provision in the specifications?

A. I should think he would.

Q. I would ask you whether or not, Captain, there was any special danger incident to the towage of this vessel from Astoria to Portland, other than there is to any other towage of a vessel on the Columbia river?

A. None whatever, provided the water is out of the ship.

Q. How do they tow vessels on the river, ahead or astern?

A. Alongside. I have always towed alongside when I was going up the river. Never saw them towed any other way.

Q. Why did they do that?

A. Because it is safer, and you can steer the ship better alongside and look after her better in making turns around the river. You can tow a ship better alongside than you can with a hawser ahead.

Q. Have you ever been up and down the Columbia river? A. I have.

Q. As shipmaster? A. Yes, sir.

Q. What can you say as to the character of the channel and the danger of vessels stranding on that river?

A. It is all right as long as you keep in the channel,

(Testimony of S. B. Gibbs.)

light draft; if you get out of the channel there is danger.

Q. How large vessels ply up and down the Columbia river? A. Vessels of five thousand tons.

Q. How do they compare in size with the "Nottingham"? A. Very much larger.

Q. When you visited the "Nottingham" in May, was there any watchman on board of her? [379]

A. No. There was a man on the dock who evidently had charge of the dock, watchman on the dock. He stated he was also looking after the "Nottingham," but he was not on board.

Q. Was there or was there not, in your judgment, any evidence of the vessel having been wet down and cared for? A. I did not see any.

Q. What do you mean by that, did not see what?

A. I did not see any evidence of that having been done.

Q. What condition did you observe the deck to be in in May?

A. The seams were more or less cracked, the putty in the seams.

Q. What effect would the exposure of the decks to the air have upon the putty in the seams?

A. Tend to crack them.

Q. How did the condition of the seams as you saw them compare with the condition that you would expect the seams to be which had been exposed to the weather?

A. They looked as though they were shrunk up.

(Testimony of S. B. Gibbs.)

Cross-examination.

Q. (Mr. BOGLE.) Captain, what was the occasion of your asking Hall Brothers for a bid upon a particular item of the repair referred to in Walker's supplementary report that you have spoken of?

A. I think, as I recollect it now, the occasion came up of Walker discussing that with me, and the price of it, and I think he had shown me a supplementary report, so that I wrote over to Hubbard and asked him to send a tender. We did not agree on the price.

Q. You had seen their previous bid, had you?

A. No, I had not seen it. [380]

Q. You knew what it was?

A. No, I think their bid came in after mine, I am not sure on that point.

Q. Let me call your attention to the bid. I imagine that you had discussed with Walker the bid on that particular item, number 6, and had agreed that there was some mistake about it, it was too high, and that was the occasion for your asking for this second bid on that particular item?

A. I do not think I saw this at all, but I am not quite sure just what the circumstances were that led me to call for this tender. But as I say, my impression now is that there was an argument between Walker and myself as to the cost of renewing these wash strakes. I had not seen that one.

Q. You knew they had made a bid on Walker's supplementary recommendation, didn't you?

A. I do not think I did at that time.

(Testimony of S. B. Gibbs.)

Q. How did it happen then that your request for a bid on that particular item went to the same concern that had bid on these specifications of Walker, as shown by their letter of March 11th?

A. How is that?

Q. Their bid shown by exhibit "K" for doing the work called for in Walker's supplemental report of March 11th, and it seems from the evidence that that is the only bid that has been made on that work. I ask you why it is that you did not know that they had bid on that work, you happened to call upon them for an estimate or a bid upon this particular item? No. 6 of their previous bid? [381]

A. Well, I am not prepared to say whether I knew the amount of their bid or not. I am not positive on that point. The best of my recollection is that I did not know what their bid was. I think it came about through an argument with Walker as to the cost, but I am not positive.

Q. In the letter from Hall Brothers to you, it states, "In line with your request of the writer personally for our price for the above work," etc. That would indicate that you had had a personal interview with Hubbard, the manager of Hall Brothers?

A. Yes, sir, I did.

Q. How was it that you asked bids for this particular part of the work referred to in Walker's supplementary report of survey?

A. As I say, it might have been through discussing the thing with Walker. I am not quite sure. But I do not think I saw his tender.

(Testimony of S. B. Gibbs.)

Q. You had seen Walker's supplementary report of survey? A. Yes, sir, I have seen it.

Q. You had at that time?

A. Yes, sir, I think I had.

Q. And you knew that he either had or would ask for bids on it, didn't you?

A. Well, I had no way of ascertaining whether he was going to ask for bids for that work in the supplemental report. Naturally supposed he would.

Q. Captain, it seems from Walker's testimony that he stated or conceded the bid for this particular item was too much, and assumed that it originated in some misunderstanding of the specifications. Now, did not Mr Walker in his [382] conversation with you, state that he thought the bid on that particular item was too high?

A. No, I do not recollect his having made that statement.

Q. When you went to Portland to examine this vessel in May, did Mr. Walker go along?

A. He came the next night.

Q. Was there not an arrangement between the parties, both sides, that you and Mr. Walker should make an examination of the vessel with a view of passing upon the particular items where Walker and Crow disagreed?

A. There was an agreement made, I believe, that we should get together and discuss these different items and see if we could come to an agreement.

Q. You knew at that time that there were differences between Walker and Crow in regard to the

(Testimony of S. B. Gibbs.)

work that was required to be done on the vessel?

A. I did.

Q. And you knew that a considerable portion of these items as to which there was a disagreement between them was included in Walker's supplemental report of survey?

A. The items which Walker and Crow disagreed upon, were in the original specifications. I do not know that Crow saw the supplemental report.

Q. Whether Crow did or did not, did you not understand when you went to Portland and had this inspection of the vessel with Mr. Walker, that you were to advise the Firemen's Fund with respect to these recommendations contained in his supplemental report?

A. My letter from the Firemen's Fund, my instructions from the Firemen's Fund, are set forth in their letter to me. [383] I have the letter right here. They are all embodied in the original specifications with the exception of that of the caulking of the hull and the renewal of the shoe, that is not mentioned in this letter.

Q. Were you advised of any differences or objection on the part of the Firemen's Fund, to the item or repair called for by Walker's supplemental report of survey?

A. I do not recollect being advised by the Firemen's Fund at that time, but I went over this agreement with Walker.

Q. You went over this agreement with Walker. You went over this supplemental report of Walker's

(Testimony of S. B. Gibbs.)

prior to the time you went to Portland in May, didn't you? A. Yes.

Q. You knew what it was? A. Yes.

Q. Now, don't you know that Mr. Page, representing the Firemen's Fund, was there disputing, or not willing, to concede the necessity of repairs called for in that report? A. Yes.

Q. And he wanted your opinion on it?

A. Yes, sir.

Q. There is no question about the representatives of the Firemen's Fund at that time being familiar with this supplemental report of Walker, was there?

A. I believe not.

Q. Did you ever examine the vessel more than this one time in May?

A. The second and third, two days.

Q. That was a continuous examination, was it, from one day to the other? [384] A. Yes.

Q. You say that you found a seam on the port side of the vessel from which the concrete and corking had fallen out or been drawn out? A. I did.

Q. You, of course, do not know when it came out?

A. No.

Q. On what line of the vessel was that seam?

A. What draft?

Q. Yes.

A. I think it was the 21 foot and four inch.

Q. You do not know what the vessel's draft was loaded? A. 21' 6", I believe.

Q. Did you see her loaded? A. No.

Q. How do you know what her draft was, captain,

(Testimony of S. B. Gibbs.)

if you never saw her loaded?

A. I have inquired what the draft was loaded. I have records up in the office showing the draft she loads at. I have heard Mr. Thorndyke state what the draft was at that time when she loaded.

Q. Who was in charge of the vessel at the time you were there?

A. The man on the dock said he was looking after her, under the employment of the dock company.

Q. What I mean is, was she still in charge of the United States Marshal under the libels? A. No.

Q. She had been released from that?

A. I think she had been released from that. I am not [385] positive of that. I did not see any evidence of it.

Q. She was not in possession of either the Firemen's Fund or The Globe Navigation Company, was she?

A. That I am not in a position to know just what her status was.

Q. Do you not know from the conference that was had at that time that each was disclaiming any interest, that each claimed the other was or should take possession and look after the vessel?

A. Yes, I knew there was some controversy over it. I knew that the Underwriters were taking no action looking after the vessel.

Q. Neither were the owners, so far as you saw?

A. I do not know, only from the fact that the watchman was there; I imagined that he was put there by the owners to look after her. I had no way

(Testimony of S. B. Gibbs.)

to determine that.

Q. You had no way of determining that. A. No.

Q. Now, Captain, how long had the vessel been on the dock at that time?

A. She was not on the dock.

Q. Where was she?

A. She was lying at the St. Johns' drydock.

Q. How long had she been lying there?

A. Well, it was May when I looked at her. I do not know how long she had been lying there.

Q. Had she been there six months?

A. Probably.

Q. Do you know, Captain, whether the concrete caulking had come out of this seam prior to the time she started on *her* [386] *the* previous fall?

A. No, I do not.

Q. What would be your judgment, Captain, as a shipmaster, from your investigation there, as to whether that seam was open prior to the commencement of her voyage?

A. You mean the seam in the stern or the seams on the top side?

Q. The seam on the side where the concrete had opened out around the valve?

A. My impression would be that it was out before she started on the voyage, from the looks of the cement.

Q. What do you base that on, Captain?

A. Because of the condition of the corking, there was no oakum in the cement.

(Testimony of S. B. Gibbs.)

Q. Did it not have the appearance of being picked out?

A. There were two pieces hanging out above this corking.

Q. That evidently either came out since she had been put there at the dock?

A. There is no way of telling that either. There is no way of determining that.

Q. It would not have been hanging there if it had had been hanging there when she started on the voyage and gone through the storm?

A. Might possibly have been. It was only a small thread there and might escape observation.

Q. If she got into a storm as the captain in his protest reports that she did, and became waterlogged, and was broke up in the manner she was, would it not have washed off any piece that had been hanging on the side? A. Not necessarily. [387]

Q. Is it not probable that it would?

A. No. I hardly think it would. Oakum sticks into the seam and even if washed out there is always a thread hanging that does not wash out, simply hangs there.

Q. Captain, did not this seam have the oakum and cement picked out of it?

A. I could not say. There was nothing in the seam. I was very particular not to touch the oakum when I examined it. I would not say that it had that appearance. There is no way of determining it.

Q. There was nothing in the appearance of it that would make that a very probable way of its coming

(Testimony of S. B. Gibbs.)

out? A. It could have been taken out, of course.

Q. Now, what was the width of the seam of oakum?

A. Well, I should say it was at least three sixteenths of an inch.

Q. What length?

A. It was open, when I looked at it, about a foot, as near as I can recollect.

Q. Above the water-line?

A. Yes. A little below deep water-line.

Q. Above the water-line as she lay? A. Yes.

Q. Perfectly dry? A. Yes, sir.

Q. And that part of the vessel had been dry at least from the time that the cargo was removed from her? A. Yes, sir.

Q. Was that open seam in such a position that surveyors in making a survey of the vessel with any degree of care, [388] would have overlooked it?

A. They might.

Q. Well, would that appear reasonable?

A. Yes, it is a very hard place to get in. A man making a survey does not usually go around under the quarter to look at the seams. It is a hard place to get at. It would be very easy to overlook a place of that kind.

Q. If a vessel had been damaged as this one had been, the extent of which was unknown, and there was a controversy between the owners and underwriters as to whether the injury was of such an extent as would amount to a constructive total loss of the vessel, and experienced and competent surveyors

(Testimony of S. B. Gibbs.)

were appointed by both sides to make a thorough inspection of that vessel, and report the full extent of her damage, could they have overlooked this open seam without being guilty of the grossest carelessness? A. After the vessel returned?

Q. Yes, after she was placed in the drydock and cargo discharged.

A. You would not be able to discover that seam in a drydock because it would be so high up in the dock. The only way of getting up to it would be to rig a whole lot of staging, and it might have been overlooked, very easily overlooked in the drydock, the fact of its being located where it was difficult to get at.

Q. You discovered it immediately upon beginning your inspection?

A. I was notified that seam was open and I knew just where to look for it. [389]

Q. By whom were you notified?

A. Captain Crow.

Q. When did he discover it?

A. I do not know. He did not tell me. That is where we always look on a vessel's top sides around under the counter, that is where to look nineteen times out of twenty, that is where I look for it.

Q. Now, in this instance, Captain, after the claim made by the captain that the vessel was leaking, and the surveyors making an effort to find where that leak was, if this seam had been open at that time would you not think that they would find it if they made a proper inspection and search for the leak?

(Testimony of S. B. Gibbs.)

A. If they had made a thorough search and inspection for the leak they should have found it.

Q. If they were competent marine surveyors they would have looked just at this place to have found one?

A. If they were looking for the leak in the ship they should have found it. But it may be that it escaped their attention.

Q. You know Frank Walker? A. I do.

Q. How much experience has he had as marine surveyor?

A. Well, he has had a good many years.

Q. Some ten or twelve years or more? A. Yes.

Q. During that time he has been quite as active as you have as a surveyor? A. Yes, sir.

Q. You regard him as a careful and competent surveyor? [390]

Mr. CAMPBELL.—Mr. Walker is not on trial as to competency. The examination is unfair for that reason, for counsel is advised of the fact that Captain Crow is dead who made this survey with Mr. Walker. I have no objection to your proceeding on that line, providing that you will admit in evidence a survey report which we hold, by Captain Crow, made under date of October 17th, in which he specifically points out this defective seam.

Mr. BOGLE.—You are referring to something that I do not know anything about. We will not make any condition as to asking questions which we think are competent.

(Testimony of S. B. Gibbs.)

Mr. CAMPBELL.—You can ascertain by examining the report.

Mr. BOGLE.—When that is offered we will consider whether we will object to it, but not now.

Q. What I want to know now, Captain Gibbs, is your judgment as to whether Mr. Walker is a competent, careful surveyor, experienced, competent and careful?

Mr. CAMPBELL.—I object as improper.

A. Yes, sir; he is a competent surveyor.

Q. You have read the report of survey made by Mr. Walker and Captain Crow, jointly, have you not, Captain? A. Yes, sir.

Q. That report shows that they were looking for the leak, don't it?

A. I do not remember anything at present in the survey.

Q. Do you know, Captain, whether this seam was really open so that it leaked or not?

A. As I saw it?

Q. Yes, sir.

A. No question about it leaking in the condition in which I [391] I saw it.

Q. How much water would get in through it?

A. It would keep a pump going most of the time.

Q. The pumps would take care of it?

A. Yes, if they were kept going constantly. I have been in a ship at sea with no bigger leak than that, that kept us pretty busy pumping, in about the same location, the same kind of a leak.

Q. Was this forward or aft? A. Aft.

(Testimony of S. B. Gibbs.)

Q. Do you know how she was trimmed?

A. When she sailed?

Q. Yes, sir. A. Not exactly; no, sir.

Q. This vessel, the "Nottingham"?

A. The "Nottingham," I imagine—

Q. Not what you imagine—you don't know?

A. I do not know, without looking it up.

Q. You do not know what the draft was?

A. I got her draft from Thorndyke at the time he left Portland.

Q. Do you know what it was?

A. I think it was 20 feet, six inches, to the best of my recollection, now.

Q. And this seam was 21 feet, four inches?

A. It is 20 feet, four inches. I made a mistake in that a moment ago.

Q. What makes you say, now, Captain, that this seam was at the 20 foot 4 inches mark instead of 21 feet four inches?

A. Because at the time I figured that she was several inches under water, with her load draft she was several inches [392] under water, that seam.

Q. Can you tell from these photographs?

A. I think I can pretty near. Yes, here is the 20-foot draft right here.

Q. Now, where is the seam?

A. The seam is right here. This is 20-foot six, and this seam was below that six.

Q. Then you assume that this seam was about two inches under water when she was on a level keel, fully loaded? A. Yes, sir.

(Testimony of S. B. Gibbs.)

Q. You think that when that seam was under water it was in that condition, the same condition at the time of this storm, as when you saw it, it would take in enough water to keep one of the pumps going?

A. I think it would. The oakum was not only gone from that seam, but the seam above it.

Q. There was no danger of the vessel foundering or becoming water-logged with that stream and the pumps working, was there?

A. You cannot tell. It is hard to gage how much water would come in through that and the flange of the toilet-pipe. I know where the flange of a toilet-pipe leaked so that they had to throw the deck-load overboard because we could not keep her free. That has been done in many cases from the leak of the flange of the toilet.

Q. Would this concrete and oakum be worked out of that seam by the straining of the vessel, if she had been straining? A. Not in that locality.

Q. If it was not picked out, Captain, then what would [393] cause it to come out?

A. It might have been slack and washed out.

Q. Washed out while she was at sea?

A. Might have possibly dropped out before she started on the voyage.

Q. But it might have dropped out after she got back to St. Johns and dried out?

A. Well, I would not say when it came out, it is hard work.

Q. Why not just as likely to drop out after she

(Testimony of S. B. Gibbs.)

got back from the voyage as before she started on the voyage?

A. I did not say when it came out.

Q. You understand that this vessel stranded when she started on the voyage, before she got out of the river? A. Yes, I heard that she did.

Q. That would necessarily strain the vessel very considerably loaded as she was?

A. Not with lumber on sand bottom. I have been ashore a number of times with a whole deck-load of lumber, on a level bottom and never strained the vessel.

Q. Have you not been ashore at other times when it did strain the vessel?

A. I would not say they would not strain where the bottom was uneven, but where the bottom is soft.

Q. Do you know what it was in this instance?

A. Only what was reported to me by others that it was soft bottom.

Mr. CAMPBELL.—Has it not been agreed between the surveyors that no damage resulted from this stranding?

Mr. BOGLE.—I do not know except what has been shown in the evidence. [394]

Q. If this vessel with a full cargo of lumber including a full deck-load, went on a bar so that a part of the bottom of the vessel was resting on that and part was not, it would necessarily be a very considerable strain, would it not?

A. Yes, if she struck a bar.

Q. And is it not a fact that in pulling her off, even

(Testimony of S. B. Gibbs.)

if she had gone into the soft bottom, she would be strained?

A. No, that would not necessarily follow.

Q. Would it not likely follow, Captain?

A. No, I don't think it would in soft bottom. You could not get power enough on the vessel to do her much harm with an ordinary tow-boat in pulling?

Q. When you mention soft bottom, do you mean that the vessel is on soft bottom from stem to stern, practically equally?

A. I mean soft bottom, not a rocky bottom.

Q. Unless the bottom was even so that the vessel rested equally from stem to stern on the bottom, she would be strained, would she not?

A. Not necessarily. There might be a space, there might be a place where she did not touch at all and it would not strain her with a cargo of lumber; if she touched in half a dozen places it would not necessarily strain her with a cargo of lumber.

Q. You very frequently use the word "necessarily," Captain. I am getting at the probabilities of it, I do not mean it always does it with every vessel on every question of stranding. [395]

A. If a vessel was long and a good portion of the bottom that would not rest on the bottom, why it would be apt to strain.

Q. You speak of some crack in the flange-plate in the water-closet. Where was that located with respect to the draft of the vessel?

A. That was below the other, the 20-foot draft. I do not remember just exactly, but it was below that draft.

(Testimony of S. B. Gibbs.)

Q. What was the extent of the crack, Captain?

A. To the best of my recollection, now, it extended right around the hole. I will not be positive of the extent.

Q. Describe the flange, something about it, so that we may understand it.

A. I described it there as a pipe from the toilet, which leads through the side of the ship. The edge of the pipe is turned over and fitted on to the outside planking.

Q. What size was that pipe?

A. I should say it was about four inches.

Q. And what was the size of this crack in it, what was the thickness of the crack, the width of the opening in the crack?

A. Might have been a sixteenth of an inch.

Q. How long was it?

A. I think it extended right around the flange. I am not quite sure on that point now. The photograph shows the extent of it in some way.

Q. If it extended all the way around, why would not the pipe drop off?

A. No, I do not think it would; it was held on the inside. [396]

Q. If broken all the way around outside it would have fallen off?

A. No, the flange is turned over, and the inside of the pipe is fastened so that it would not drop out.

Q. Where would the water that entered that crack in the flange first go?

A. It would go down into the bilges, going through

(Testimony of S. B. Gibbs.)

the plank between the seams of the plank, down into the hold.

Q. How much water would enter in that, Captain, assuming that it was under water all the time?

A. It would let in a little stream in under that pressure, I would not want to state just how much.

Q. Would it fill the ship in the course of a couple or three days?

A. No, I do not think quite as bad as that. It would materially affect the pumping of the vessel. It would increase the pumping of the vessel a few hours probably in the twenty-four.

Q. These sailing vessels always take more or less water through the bilges, don't they?

A. No, not all of them. Some of them are practically tight.

Q. Most of them do, don't they? A. Yes.

Q. Now, this would have been a very small stream through that crack in the flange, would it not?

A. A small stream under pressure lets a lot of water in a ship.

Q. Now, I think you are a little inclined to argue these [397] things. In the first place, there don't seem to have been any more pressure—how deep was this under the water-line?

A. Well, I should say perhaps a foot and a half.

Q. You think it was down to about the 18-foot or 18-foot and a half draft line?

A. I think somewhere about the 18 or 19 foot draft.

Q. Which side was it on? A. Port side.

(Testimony of S. B. Gibbs.)

Q. Then it would not take any water except when the vessel was on the starboard tack or on an even keel, would it?

A. Well, providing the vessel was leaning over on the port tack, it would be out of the water, except the slopping of the sea, which would let in some water.

Q. It would be immaterial?

A. It would not be as much as if under water.

Q. Do I understand you to mean, Captain, that this crack in the flange would admit enough water to have any material effect in water-logging a vessel of this size in the course of a couple of days?

A. I think it would help in addition to the crack in some other place, the two combined.

Q. You think the two combined, with the pumps working, would water-log that vessel in two days?

Mr. CAMPBELL.—I object to the assumption as not being a fact that it would water-log it in two days.

Mr. BOGLE.—I want to get some notion of what the witness' judgment is as to the amount of water she would get in.

Q. I will ask you how long it would take to water-log that [398] vessel from these two leaks you have spoken of with the pumps working?

A. There is no way of telling how long it would take.

Q. It would not do it at all, Captain, would it, with the pumps running, these two leaks you mention?

A. Well, I don't know whether the pumps were running all the time.

Q. Now, Captain, don't argue with me again. Just

(Testimony of S. B. Gibbs.)

answer the question.

A. I would not say whether it would or not. It is impossible for anyone to tell how much water would come through any place of that kind.

Q. Do you know how this flange was broken?

A. No, I do not.

Q. Likely it had been broken by some logs or some heavy matter on the side of the ship running against it?

A. We see them broken very often on ships.

Q. If the deck-load washed over it would be very reasonable to assume that that would break it?

A. No, I do not think it would.

Q. Why not, Captain?

A. Well, it would show a dint in the flange if a piece of timber struck it. We have seen it in many cases extending right around. They do not seem to show any knock or any indication of anything to injure it. I do not know whether it is corrosion or not.

Q. What is the material of that pipe?

A. Lead

Q. Made of lead? A. Yes. [399]

Q. It would not have broken out, Captain, if a log or some other substance had not struck against it or the straining of the vessel?

A. Well, I would not want to say what breaks them, but I do know they do break frequently.

Q. There is nothing to indicate to you that it had been broken before she started on that voyage, is there? A. No.

(Testimony of S. B. Gibbs.)

Q. Could you tell whether it was an old break or a fresh one? A. No way of telling at that time.

Redirect Examination.

Q. (Mr. CAMPBELL.) I will ask you whether or not in your judgment, Captain, the seam and the crack of that flange were sufficient to account for the behavior or leakage of that vessel, described as follows: "Shortly after leaving Astoria with the schooner "William Nottingham," I found that she began to leak more than usual, and had to pump one hour out of every four, wind blowing from the south and the vessel on the port tack; I stood off to about longitude 128 west, when the wind hauled somewhat to the west of south, and I put the vessel on the star-board tack. When this was done, I found the leak increased to such an extent that the hand-pump was not able to keep her free; I started the steam-pump, which failed to work." A. I think it would.

Q. Now, you speak of competent surveyors. Captain, in your judgment, would it be possible for a competent surveyor— [400] would a competent surveyor make up specifications for repair of a vessel in which the specifications states it is their intent to make the vessel, place the vessel in the same good condition as before the accident, and provide in these specifications for the caulking of four seams alongside the waterways the full length of the vessel, one seam on each side of the hatch coaming full length of the vessel and around hatch coaming, and not provide for the caulking of the entire deck of the vessel, if she needed it? Do you think any surveyor would

(Testimony of S. B. Gibbs.)

make specifications of that character?

A. Well—

Q. Make up specifications of that character, when it was the intention to place that vessel in a seaworthy condition, if the rest of the deck needed caulking?

Mr. CLISE.—I object to the question on the ground that there is nothing to base that supposition upon; that it is not based upon anything contained in the survey and specifications as agreed upon by Walker and Captain Crow.

Mr. CAMPBELL.—I object to the statement of counsel. There was an express agreement on that point.

A. I think the surveyor who made up specifications of that kind intended to cover everything there was to be done to that ship to put her back in the same condition as she was before the accident, that was his intention.

Q. Now, would a surveyor recommend a specific piece of caulking in his specifications unless he had evidence that indicated that there was a leak where the caulking was to be done? [401]

A. He might possibly recommend a certain amount of caulking to be done, where there was no evidence of leak, on general principles he might consider that the waterway seam of the ship might possibly be strained. If any seam was strained in the ship, if the vessel was strained, to use every precaution possible, he might recommend the waterways seams be caulked and several seams next to

(Testimony of S. B. Gibbs.)

each hatch course, to be absolutely on the safe side.

Q. If the surveyor recommended certain seams be caulked, in your judgment would he either have knowledge of the existence of a leak in that seam, or be suspicious of the fact that a leak might exist there?

A. Yes, he might be suspicious *that existed* there.

Q. Would he either have knowledge or a suspicion that a leak might exist there? A. Yes, sir.

Q. Now, I will ask you whether or not the following provision in the original specifications would cover the caulking of the leak in the seam at the stern post, the original specifications provide: "Gar-board seams on both sides, hood-ends of planking and all butts of bottom and topsides to be thoroughly calked, seams painted and cemented." I will ask you whether or not the seam at the stern post would be covered by the specifications in the caulking of the hood-ends? A. It would.

Q. And if the "Nottingham" stranded at her fore-foot, before she proceeded to sea, on soft bottom, I will ask you whether or not in your judgment, that would strain the seams around the stern post so as to cause her to leak [402] as you say this seam leaked? A. No, I do not think it would.

Q. When the "Nottingham" was in the drydock at the Port of Portland, how high above the floor of the dock would this seam be?

A. It would be the draft of the ship plus the depth of the keel blocks. It would be about 24 feet.

Q. How far in from the extreme stern of the ves-

(Testimony of S. B. Gibbs.)

sel, as shown in exhibit 3, would the leak be?

A. I should judge about 12 or 14 feet.

Q. Would it be possible to see that seam and inspect that seam from the vessel while she was in the dock?

A. No, not without a sufficient staging.

Q. What would be necessary in order to get up to the seam so as to inspect it, while the vessel was in the dock?

A. It would take ladders or very high staging.

Q. You testified that you were instructed by the Firemen's Fund to take up matters in dispute with Mr. Walker. I will ask you if the matters in dispute between you, which you did consider are those which are embodied in the agreement entered into between you marked "5a," were the matters which are covered by yourself and Walker's agreement of March 27th,—were the matters in dispute considered by the two of you?

A. Yes, it includes all these matters.

Q. Were they or were they not the matters instructed by the Firemen's Fund to take up with Mr. Walker? A. They were the matters.

Q. Now, when you went to Portland, was there any disagreement between you and Mr. Walker and Captain Crow, as to [403] the necessity of this new deck caulking which he had brought in in his supplemental report and the caulking of the planking of the vessel?

A. Yes, there was a disagreement.

Q. Were you able to agree with Walker that that

(Testimony of S. B. Gibbs.)

planking in the entire deck needed recaulking as the result of damages suffered by this accident?

A. No.

Q. Did you show Captain Crow Walker's supplemental report? A. I do not think I did.

Q. Did you see Captain Crow at any time prior to that visit of May second?

A. No. I saw him for a few minutes here in Seattle when he came over to meet Mr. Taylor, but I did not discuss the case with him at all.

Q. You furnished Mr. Page with what purported to be a copy of the supplemental report that Walker had given you, didn't you? A. Yes, sir.

Q. (Mr. BOGLE.) Captain, when you and Mr. Walker were making these investigations on May second and third, did you call his attention to this open seam that you have testified about?

A. Yes, I spoke to him about it.

Q. Was the repair of that seam covered by any of the specifications?

A. Well, the specifications call for the hood-ends to be caulked; that would take care of these seams.

Q. Did Mr. Walker know about that open seam before you [404] called attention to it?

A. I think he did know something about it, but he claimed it was not as large as when I saw it.

Q. That is he claimed it was not as large in December as in May?

A. I do not know just what time he saw it, but he intimated to me, as I recollect now, that he knew of the existence of this seam in this condition, or rather

(Testimony of S. B. Gibbs.)

in an open condition.

Q. But not in the condition it was when you were down there?

A. That is what he stated to me. The seam itself—I want to go a little further—the seam was not only open but very slack all up above it, which accounts for the water coming in there in such large quantities. I do not want it confined to the open space all under there, but it was very slack above it.

Q. You mean for a further distance?

A. Yes, sir.

Q. Was it slack enough to admit water through it?

A. It was, yes, sir.

Q. And you say that is not attributable to the fact that the vessel had been lying exposed to the sun all these months?

A. I would not say that it was, from the fact that the sun did not reach it under there, the seam was in such a position on the ship, being under the quarter, it is pretty well protected from the sun. I do not think it would have any effect on it.

Q. Can you give any explanation at all, Captain, of the existence of that seam?

A. The explanation I would give, when the vessel was caulked [405] that seam was slighted. I have seen so many cases. It is too hard work to put the staging up and sometimes it is slighted.

Q. If the vessel had been caulked in 1908, it had been in that condition for three years?

A. Yes, sir.

Q. And you say this was under the water-line

(Testimony of S. B. Gibbs.)

when loaded; would it not flood the vessel?

A. There might be enough oakum in there to keep the water out.

Q. If your explanation is correct, Captain, she was not in any worse condition, practically, when she started on this voyage, than she had been on all the preceding voyages after the last caulking?

A. The caulking does not improve any with age.

Q. Well, if the defect was there, and the caulking was not put in when she had been previously caulked, and that was the trouble, her condition practically was the same during all these years?

A. No, there might have been some oakum come out before she started on the voyage.

Q. It might have come out when lying here at this drydock?

A. Yes, I would not say that it was not.

Q. Just as likely to come out then as any other time, was it not, Captain?

A. Yes, I believe it would.

Q. Now, Captain, you say that you and Walker went down on the second or third of May?

A. Yes, sir.

Q. You went pursuant to the understanding of the conference between the representatives of the Firemen's Fund and the [406] representatives of the Globe Navigation Company, to see if you and Walker, after looking over these defects on the ship, could come to an agreement? A. Yes, sir.

Q. And I understood you to say, in answer to Mr. Campbell, that the results of that examination made

(Testimony of S. B. Gibbs.)

by you and Mr. Walker were embodied in this joint report on both sides. A. Yes, sir.

Mr. CAMPBELL.—That survey was dated March 27, and they were there May 2d.

A. I am mistaken.

Q. That is all I called your attention to, this embodied the result of that?

Mr. CAMPBELL.—That is not the result of the conference and general inspection by you and Walker made pursuant to request in May shown by exhibit “5a”? A. No.

Q. When you signed this, you had never seen the ship? A. Never seen the ship.

Q. Now, you say that you furnished Mr. Page with a copy of Walker's supplemental report?

A. Yes, sir, I believe I did; to the best of my recollection.

Q. When was that, Captain?

A. I do not remember when it was.

Q. Well, was it about the time of this inspection?

A. I do not recollect when I furnished it to him. I cannot remember all these details.

Q. Mr. Page was there when you made the inspection? A. Yes, sir.

Q. And you were there to look into these very questions Walker [407] had pointed out in his supplemental report? A. Yes, sir.

Q. And you had a copy of the report? A. Yes.

Q. And at some time at least you did give it to Page? A. Yes, sir.

Q. That was not recently, was it? A. No, sir.

(Testimony of S. B. Gibbs.)

Q. Somewhere about that time?

A. Somewhere about that time.

Q. And so far as you know, the Firemen's Fund or the representatives of it, have had that report ever since? A. As far as I know.

Q. (Mr. CAMPBELL.) How does age affect the caulking of a boat? A. Age deteriorates it.

Q. If this caulking drooped out while the vessel was in the drydock, or docked at Portland, what must have been the condition at the time that the vessel sailed? A. Very poor condition.

Q. To clear up the confusion which has been introduced in the record by counsel, I will again ask you, as I did on direct examination: If this agreement between yourself and Walker, under date of March 27th, embodies these matters, why were you instructed by the Firemen's Fund Insurance Company to take up and consider with Mr. Walker—

A. It does—

Q. And the inspection of the vessel in May, 1912, was entirely a different matter and subsequent to that period? A. Yes, sir. [408]

Q. (Mr. BOGLE.) I want to get that straight. Now, Captain, you went down there in May, 1912, to make this joint inspection with Walker?

A. Yes, sir, I went down there at the request of Mr. Page, at that time.

Q. To make this inspection, to meet Walker there at the time in making an inspection, whether it was a joint one or not, was that your instruction?

A. I do not know as I had, when I come to think

(Testimony of S. B. Gibbs.)

it over, any definite instructions at the time. I think Page requested me to go down and arrange with Thorndyke for Walker to go down, that is my best recollection now.

Q. Now, is it not a fact under your instructions, to go over these matters with Walker, and see what should be done, in order that you could give the Firemen's Fund the benefit of your judgment?

A. Yes, I think it was.

Q. That was entirely a matter of inspection?

A. Yes.

Q. And had nothing to do with this March 27th report? A. No.

(Testimony of witness closed.) [409]

[Testimony of Charles R. Page, for Defendant.]

CHARLES R. PAGE, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) What is your present position, Mr. Page?

A. I am in charge of the marine loss department of the Firemen's Fund Insurance Company.

Q. How long have you been engaged in that business? A. Nearly 12 years.

Q. As part of your duties, did you ever have occasion to examine the adjustments of losses, both as to general average and particular average losses?

A. I have to examine a great many such adjustments.

Q. Do you hold any official position, aside from your connection with the Firemen's Fund Insurance

(Testimony of Charles R. Page.)

Company, which calls for your examining adjustments?

A. Yes, I am a member of the adjustment committee of the Board of Marine Underwriters of San Francisco.

Q. Do you know the firm of Johnson & Higgins?

A. I do, very well.

Q. What position do they occupy as adjusters on the coast? A. Probably the foremost position.

Q. Were you present at a conference in Mr. Clise's office in Seattle at which Judge Bogle and myself were present? A. I was.

Q. Did you at that time have Mr. Walker's supplemental report? A. I did not.

Q. Were you afterwards furnished a copy?

A. I was.

Q. By whom? A. By Captain Gibbs. [410]

Q. When was that?

A. That was about the 6th day of May, when I was in Portland with Captain Gibbs.

Q. What did you do with that copy?

A. I took that copy with me to San Francisco, and had a copy made in our office, of it.

Q. Have you the copy that was made in San Francisco? A. I have.

Q. I hand you a document and ask you what it is?

A. That is the copy made in our office, of Mr. Walker's supplemental survey report, which had been handed to me by Captain Gibbs.

Q. What did you do with the copy that Captain Gibbs handed to you, after this one was made?

(Testimony of Charles R. Page.)

A. I returned it to Captain Gibbs.

Q. I will ask you to compare this copy, which was made in your office, with the copy which was produced by the libellant here and marked exhibit "J," and ask you if there is any discrepancy between the two copies?

Mr. CLISE.—I object for the reason that they are both printed documents and they will speak for themselves, and it is not necessary for the witness to interpret them or to explain anything that is apparent from the reading of the two documents.

A. There is one discrepancy, yes, in the first paragraph of the copy of Mr. Walker's supplemental report which was produced here by Mr. Clise, I presume, or Mr. Walker, exhibit "J," there appears the following "And was unknown previous to September 26th, 1911," whereas, in the copy which was made in our office, there appears the following [411] "And was known previous to September 26th, 1911."

Q. What is being referred to?

A. A concealed damage in the ship of serious leakage. Otherwise I believe them to be the same.

Q. The prices appear on your copy. Do they appear on the one produced by Walker?

A. I cannot state as to that.

Q. Do they?

A. They do not appear in Walker's copy.

Q. When you made *requestion* upon Johnson & Higgins for the production of a copy of that survey report, will you state whether it was or was not, on

(Testimony of Charles R. Page.)

or about that time, that you noticed the fact that your survey report stated that the leakage was known on September 26th, 1911?

A. No, it was not at that time.

Q. When was it? A. Subsequent to that.

Q. Were you present at the time that Captain Gibbs has testified to, when the rule was inserted in the seam at the stern post at Portland?

A. I was, yes, sir.

Q. Did you see the rule inserted?

A. I did, yes.

Q. How far was it put into the seam?

A. I should say about five inches.

Q. By what means were you able to get so that you could reach the seam?

A. By standing on top of the cabin of a launch belonging to the Port of Portland, I believe.

Q. Did you, at that time, take any measurements, or record any [412] measurements that were taken in your presence by Captain Gibbs and Captain Crow, of the deck seams in the "Nottingham"?

A. I recorded such measurements, yes.

Q. Have you that memorandum with you?

A. I have, yes.

Q. Will you produce it?

(Witness does so.)

Q. Will you read them into the record?

A. May 3d, "William Nottingham." Length of main deck 130 feet, seams between hatches 38.

Mr. CLISE.—I would like to have it appear in the record that it is incompetent and immaterial as to

(Testimony of Charles R. Page.)

what the condition of the "Nottingham" was on the 3d day of May, 1912. That the only question in issue is the condition of the "Nottingham" as she appeared in Astoria harbor on the 14th, 15th and 16th days of October, 1911.

Mr. CAMPBELL.—I am asking for the lineal length of the deck seams. I want to show how close your surveyor, Mr. Walker, guesses about it this morning, when he said there was a duplication of five per cent.

Mr. CLISE.—I want this objection to go to all testimony that relates to the then condition of the "Nottingham" as she appeared at the time of this inspection, rather than to make my objection as each question is asked.

A. (Continuing.) Measuring 3772 feet. Seams outside the hatches 76, measuring 9880 feet. I have the total 13,652 feet. Waterways 1560 feet. Hatch coaming 60 feet. Break of poop 40 feet. Break of forecastle 40 feet, yielding a total of 15,352 feet.
[413]

Q. Was that the combined length of all the seams in the main deck of that vessel? A. Yes, sir.

Q. Now, did you take any measurements of the combined length of the seams in the main deck of the vessel, which were covered by the original specifications? A. I took no such measurements.

Q. Did you record the measurements which were taken by Captain Gibbs and Captain Crow, in your presence? A. I did, yes.

Q. Have you that memoranda present?

(Testimony of Charles R. Page.)

A. I have, it is right here.

Q. Read it into the record, please?

A. 8 seams and 2 seams, total 10 seams 130 feet, 1300 feet. Hatch coaming 60 feet. Waterways 520 feet. Total 1880 feet.

Q. What is the difference, Mr. Page, between the combined length of the seams provided to be caulked under Walker's supplemental survey and the combined length of the seams which were to be caulked under the original specifications? A. 13,472 feet.

Q. Captain Gibbs testified that they gave you a memorandum of the total combined length of the seams between the outside planking of the vessel.

A. They did so.

Q. Have you that memorandum that you made at that time? A. I have.

Q. Will you read it into the record, please?

A. From the load line to the bulwarks on each side 17 seams, 215 feet long, yielding 7310 feet in all. That is from [414] the load line to the bulwarks.

Q. Were these seams above the water at that time?

A. They were all above the water at that time, yes.

Q. Did the vessel have any cargo in her at that time? A. No, none at all.

Q. What condition did you observe the cement in the seams between the outside planking to be at that time?

A. Cracked and much of it missing at that time.

Q. What was the condition of the planking itself?

(Testimony of Charles R. Page.)

A. To a certain extent, shrunk.

Q. What was the condition of the deck planking, deck seams?

A. The deck seams also showed cracks in the pitch. I cannot state as to the condition of the deck planks; I do not recollect particularly what that condition was.

Q. Was there any comparative difference between the seams between the planks on the port side and on the starboard side of the vessel?

A. There was, yes, sir.

Q. Which seams were in the worse condition?

A. Those on the starboard side.

Q. Which side was the most exposed to the sun?

A. That side.

Q. When you went first aboard the "Nottingham" at St. Johns, did you receive any permit?

A. Before I left Seattle, I secured a letter from Mr. Thorndyke to the keeper of the dock that would authorize me to go aboard the vessel.

Q. What did you do with that letter?

A. I am not certain whether I surrendered that to the man there or not? [415]

Q. Have you it at the present time?

A. I think not.

Q. Did you record any measurements of the draft of the seam at the stern post? A. I did, yes.

Q. What did you record? A. 21 foot mark.

Q. Did you make any record of the draft of the vessel at time, her loaded draft?

A. I made a record of what I was told was her

(Testimony of Charles R. Page.)

load draft when she sailed.

Q. What was that?

Mr. CLISE.—I object as incompetent, irrelevant and immaterial and hearsay.

Mr. CAMPBELL.—I am not seeking to prove what her loaded draft was. I want to show the difference of four inches between the draft of the seam and the loaded draft as given to him at that time.

A. 21 feet 4 inches.

Q. What was the loaded draft given to you at that time?

A. I have just given it to you, 21 feet 4 inches at the load draft.

Q. Do you recollect who gave you that draft?

A. Captain Crow.

Q. I hand you a document and ask what that is?

A. That is a report of survey of the schooner "William Nottingham," signed by Albert Crow, surveyor of the Board of Marine Underwriters of San Francisco, at Portland, under date of December 23, 1911.

Q. Is Captain Crow now alive? [416]

A. Captain Crow is dead.

Mr. CAMPBELL.—Now, I hand this survey report to counsel, with the understanding that Captain Crow is dead, and that it is not admissible as competent evidence on my part, and call their attention to the fact, that in this report Captain Crow points out the existence of the leak in the seam at the stern post of the "Nottingham," and ask their permission

(Testimony of Charles R. Page.)

to introduce the report in evidence.

Mr. CLISE.—We will consider that. And I suppose that the statement that counsel has just made of its contents, is not intended to be considered as evidence in the consideration of this case.

Mr. CAMPBELL.—No, sir. I do not want anything in the record that is not proper.

Q. I call your attention to a document and ask you to state what it is?

A. That is a copy of a night letter received from Captain Crow, just referred to, of Portland, under date of December 21, 1911, by the secretary of the Board of Marine Underwriters of San Francisco.

Mr. CAMPBELL.—We will produce the original of that and will ask if counsel will also admit that telegram in evidence. I want the record to show this: That these documents show a report by Captain Crow of the existence of the open seam at the stern post. And my only purpose in asking it, is that your examination of Captain Gibbs contained an inference of the manipulation of that seam, as I understood the question.

Mr. CLISE.—I move that the statement of counsel be stricken on the ground that it is incompetent and a self-serving [417] declaration, to get into the record something that he cannot get in, in the ordinary way of proof.

Mr. CAMPBELL.—I am not asking for a consideration by the Court of the contents of these documents. I am simply asking if counsel will admit the same. I want it specially understood that the

(Testimony of Charles R. Page.)

Court is not to take them into consideration.

Mr. CLISE.—We consent that you read the letter into the record.

Q. Read the telegram into the record.

A. "Bottom ship shows no sign of straining due to stranding Westport creek. Port garboard chafed almost full length. Will smooth off little expense. Vessel's hull shows slight trace having touched bottom. Stern post seam on 20-foot mark, space 6 inches long, no oakum whatever. This space and backs of stanchions and covering boards admitted practically all the water. Recommend all butts, garboards, stern post, stern seams, corked. Also seams showing cement loose above load line be cemented. Also about 3,000 feet seams corked on main deck. Cost for repairs will be less than former estimate. Vessel has been floated. Owner prepared specifications for repairs will be submitted to me. Believing they have no claim, will not waste time on them unless you so direct."

Mr. CAMPBELL.—That is all I care to ask about it now, Mr. Clise. When there is a segregation made, as we will make it at Portland, of the bids, I shall want to examine him there, as to the principles upon which the adjustment as to partial loss is made, under the terms and conditions of the policy covering this vessel, for the purpose of figuring the cost of repairs necessary to constitute a [418] constructive total loss of the vessel giving you the right to abandon her. Would you prefer to have that now, or to wait until we get to Portland. If we go on with

(Testimony of Charles R. Page.)

it now, it will necessitate a duplication of the testimony, in my judgment.

Mr. CLISE.—I would like to cover as much here as possible, so that we will be delayed at Portland as little as we can.

Cross-examination.

Q. (Mr. CLISE.) You did not see the vessel until you examined her at St. Johns in May?

A. Not until the 3d of May.

Q. So that all your statements are based upon the condition that the vessel was in, at that time?

A. All my statements going to the condition of the vessel are based on the condition in which she was at that time.

Q. And the fact that the conditions of the star-board side were in some respects worse than those on the port side, was due to the weather that she had encountered during the time that had elapsed since October until the time you examined her?

A. Since October, what do you mean by that? Since she was returned to Astoria?

Q. Yes. A. In my estimation, yes.

(Witness excused.) [419]

Mr. CAMPBELL.—I offer in evidence the letters produced by Mr. Thorndyke, as having been exchanged between himself and Johnson & Higgins, relative to the production of the Walker supplemental report, with respect to which he was questioned this morning.

Letters marked Defendant's Exhibits "11" and "12," respectively, filed and returned herewith.

(Testimony of Charles R. Page.)

Mr. CAMPBELL.—I also offer copy of the report of Walker which was referred to as having been made in Mr. Page's office.

Paper marked Defendant's Exhibit "13" filed and returned herewith.

(Hearing adjourned.) [420]

Seattle, Wash., Aug. 30, 1913.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

[Testimony of C. M. Nelson, for Defendant.]

C. M. NELSON, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Q. (Mr. CAMPBELL.) Where do you live, Mr. Nelson? A. Portland, Oregon.

Q. What business are you in?

A. Building steamboats and barges.

Q. How long have you been a ship builder?

A. I have been working at it for forty years.

Q. What class of vessels do you build, wooden vessels or steel? A. Wooden vessels, all wood.

Q. Will you tell me what, in your judgment, the prevailing price for calking was, in Portland, in the fall of 1911? A. The price of calking?

Q. Yes, sir. A. By the foot?

Q. Yes, sir.

A. I should judge about seven cents.

Q. Did you in December of 1911, examine the schooner "William Nottingham" while she was on the drydock at the Port of Portland drydock?

A. Yes, sir.

(Testimony of C. M. Nelson.)

Q. At whose request did you make that examination? A. Mr. Talbot.

Q. What condition did you find her bottom in?

A. I found it in first-class condition. [421]

Q. Did you examine her in the region of her forefoot? A. Yes, sir.

Q. Did you find any evidence of damage from stranding? A. None, whatever.

Q. Did you examine along her bottom?

A. Yes, sir.

Q. What was it? A. The bottom was good.

Q. Did you find any evidence of stranding?

A. No, sir, not at all.

Q. Did you examine this seam at the hood-ends along the stern post?

A. Well, as far up as we could see from the dock. I did not get up under the counter of her.

Q. In what condition did you find her outside calking to be? A. Very good.

Q. In what condition did you find her deck calking to be?

A. The decks were very good. All except probably a little loose along the covering board.

Q. What else do you call it, the covering board, the waterways? A. The waterways, yes.

Q. Did you examine her again in May, 1912?

A. Yes, sir.

Q. How did the condition of her outside seams at that time compare with what they were when you examined her in December?

A. Well, she seemed to have been dried up con-

(Testimony of C. M. Nelson.)

siderably. On the sunny side. She laid broadside to the sun for [422] several months and it seemed to burn the paint off and dry the wood up some.

Q. How did her deck seams in May compare with her condition as you observed them, in December?

A. They were naturally dried up about the same as the side. They had no water on her.

Q. Which side was exposed to the sun?

A. The starboard side.

Q. Where was she when you examined her in May?

A. She laid outside of the drydock, up against the dock, up against the wharf.

Q. Did you see this seam at the stern post at that time? A. No, sir, I did not see that seam.

Cross-examination.

Q. (Mr. BOGLE.) Who was Talbot?

A. He was manager of the Port of Portland.

Q. This examination of yours was made at his request, in the interest of the Port of Portland?

A. Yes.

Q. During the time that she was under the libel for salvage suit instituted by the Port of Portland?

A. Yes, sir.

Q. What was the purpose of that examination?

A. Well, I understood that she had grounded on the river and they wanted to see if the Port of Portland was responsible for it or any damage done, that was the part I was sent down to see.

Q. Do you know, Mr. Nelson, whether the frame work or the upper works were strained by the pulling of the tugs [423] at the time she was stranded?

(Testimony of C. M. Nelson.)

A. No, I am sure in my own mind there was no straining for that reason.

Q. Well, she had a very heavy cargo both under deck and on deck? A. Yes.

Q. And she was stranded there from one high tide to another? A. Yes, sir.

Q. And it was a pretty heavy pull to get her off?

A. It would not hurt the ship any.

Q. As a matter of fact what you examined was her bottom? A. Yes, sir.

Q. You did not examine her to see whether her frame work was strained at any part? A. No.

(Testimony of witness closed.) [424]

Seattle, Washington, September 2, 1913.

Present: Mr. CLISE and Mr. BOGLE, for the Plaintiff.

Mr. CAMPBELL, for the Defendant.

[Testimony of S. B. Gibbs, for Defendant
(Recalled).]

S. B. GIBBS, recalled on behalf of the defendant, testified as follows:

Q. (Mr. CAMPBELL.) Are there any corrections in the testimony you have given on former hearings in this case?

A. Yes, I would like to correct my statement in regard to the toilet pipe.

Q. Go ahead and make such corrections as you desire.

A. I would like to state that the toilet pipe is three inches above the water when the vessel is loaded, in-

(Testimony of S. B. Gibbs.)

stead of being under water, as I stated previously.

Q. That is when she was on an even keel?

A. When she was loaded.

Q. In your judgment would that flange to the toilet pipe be put under water when she was on the star-board tack with a good sailing breeze?

A. It would.

Q. I will ask you, Captain, whether or not in your judgment, it would be possible to so fasten the planks of a vessel on to her stern post as to make the seams between the ends of the planking and the stern post water-tight without corking them?

A. I do not think it would. [425]

Cross-examination.

Q. (Mr. BOGLE.) Do you know the plans of the vessel and the frame work at that point?

A. No. I know the ordinary plans of a vessel of that kind. The stern post is rabbetted and the planks are fastened on to the rabbetting.

Q. Now, you were surveyor for the San Francisco Underwriters. How long have you been their surveyor? A. About eleven years and a half.

Q. You have attended all of the sessions before the Commissioner taking testimony in this case?

A. I think I have, most of them.

Q. And have been aiding and assisting proctor for the respondent in this case?

Mr. CAMPBELL.—I will admit I have asked Captain Gibbs his opinion on various matters that came up.

A. I do not know whether I have aided and as-

(Testimony of S. B. Gibbs.)

sisted him very much.

Q. You have sat by and conferred with him and made suggestions in the course of the examination of all the witnesses.

A. I do not think all of them. I think I may have made a few suggestions.

Q. You are doing that in the interest of the Underwriters? A. Yes, sir.

Q. (Mr. CAMPBELL.) I have asked you from time to time during the hearing, have I not, as to your opinion on certain matters that have developed?

A. You have.

(Witness excused.) [426]

Seattle, Washington, Dec. 29, 1913.

Present: Mr. CLISE and Mr. BOGLE, for Plaintiff.
Mr. SHORTS, for Defendant.

[Testimony of Frank G. Taylor, for Defendant.]

FRANK G. TAYLOR, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Q. (Mr. SHORTS.) Your name is Frank G. Taylor? A. Yes, sir.

Q. You are a resident of Seattle, Washington?

A. Yes, sir.

Q. I will ask you, if on October 1st, 1911 and at all times since, you have been general agent for the State of Washington for the Marine department of the Firemen's Fund Insurance Company?

A. Yes, sir.

Q. With offices in the Colman building in this city?

(Testimony of Frank G. Taylor.)

A. Yes, sir.

Q. Mr. Taylor, Mr. Thorndyke, of the Globe Navigation company, states in his testimony taken in this case, that on Saturday, October 14th, 1911, he had some conversation with you over the telephone, you being, as he states, at that time in your office in the Colman building, concerning the schooner "Nottingham" and the trouble that she met off the Columbia bar. I will ask you to state whether you remember having any such conversation with him on that date?

A. No, I was not in Seattle on the 14th of October, that is, I left Seattle on the nine o'clock boat for Tacoma.

Q. What boat did you go over on?

A. I went over on the 9 o'clock "Indianapolis."

[427]

Q. And were in Tacoma how long that day?

A. I left there at seven o'clock in the evening.

Q. What time did you return to Seattle?

A. I got over here about a quarter of nine in the evening.

Q. Were you in your office at any time that day?

A. After nine o'clock in the morning?

Q. Between nine o'clock in the morning and nine o'clock in the evening?

A. No; I do not think I was at the office at all that day.

Q. Did you have any such conversation with Thorndyke on that date? A. No, none whatever.

Q. When was the first that you ever heard from

(Testimony of Frank G. Taylor.)

Thorndyke relating to this matter?

A. He came in Monday morning, the 16th and discussed the case at that time.

Q. He came in, in the morning, on Monday the 16th, you state? A. Yes, sir.

Q. Did he, at that time, give you any notice of his intention of his company, of abandoning this vessel?

A. None whatever. The matter was not discussed at that time at all.

Q. What was discussed at that time?

A. Oh, general conditions. Simply talking about the trouble the vessel had had. No one knew at that time the extent of her damages. He came in, in the afternoon, however, of the same day and presented me with a letter of abandonment.

Q. That is on the afternoon of Monday, October 16th, [428] 1911? A. Yes, sir.

Q. Did you at any time, on Saturday October 14th, 1911, hear from any source of the trouble that had come to the schooner "Nottingham"?

A. Yes. When I got home. I don't know how long after I got home, possibly an hour, the Merchants' Exchange called me up, as they very often do in the evening, to give me any items that may be of interest, and advised me that the vessel had been in trouble off the Columbia River bar.

Q. You received that information by telephone?

A. I received that information by telephone.

Q. Where were you at the time you received it?

A. At my home.

Q. Where? A. In this city.

(Testimony of Frank G. Taylor.)

Q. What time of night was it you received it?

A. I would be unable to tell what time it was; but I should say possibly ten or half past ten at night.

Q. Was that the first information you had received from any source of the trouble that came to the "Nottingham"?

A. That was the first information I had received that the vessel was in any trouble.

Q. Was your wife in the city at that time?

A. No. My wife and family were in Spokane.

Q. Was there any one at your home during the day of October 14th, 1913?

A. The maid might have been at the house.

Q. I ask you, Mr. Taylor, do you keep a diary from day to [429] day? A. I do.

Q. Of your daily transactions?

A. I do, of the more important things that happen during the day.

Q. Did you keep a diary during the year 1911?

A. I did.

Q. I ask you to turn to your diary and to the page therein that shows your movements on October 14th, 1911, and state by whom the entries that appear on that page were made? A. Made by me.

Q. Are they in your own handwriting?

A. They are.

Q. When did you enter that in your diary for that day? A. You are speaking of the 14th?

Q. Yes, sir.

A. The entries on the 14th I would say were made on the Monday morning following.

(Testimony of Frank G. Taylor.)

Q. I will ask you to remove that page from the book, Mr. Taylor. (Witness does so.) What is the entry on the back of the page?

A. That is for Sunday, the 15th.

Q. Of October, 1911? A. Yes.

Q. I will ask you if these entries have been modified or changed in any way since the time they were made? A. Not at all.

Mr. SHORTS.—I offer this in evidence.

Paper marked Defendant's Exhibit "18," filed and returned herewith. [430]

Q. Will you read the entries that appear under date of Saturday, October 14th, 1911?

A. (Reading:) Left for Tacoma at 9 A. M. on "Indianapolis."

Went first to International Fisheries Company where I collected Zapora premium and had most insulting experience with Morse.

Called on Mr. Ireland of Alaska Coast Co. about premiums Jeanie & Bertha which he promised substantial payments on before end of next week.

Called on Arthur and discussed property interests.

Mother and Father's anniversary tomorrow.

Had dinner with them to-day and spent afternoon.

Left for Seattle on 7 o'clock "Indianapolis." Arrived Seattle 9 P. M. and went home.

Schooner "Wm. Nottingham" reported water-logged and abandoned off Oregon coast full cargo lumber.

Q. What does that last entry "Schooner 'Wm. Nottingham' reported water-logged and abandoned

(Testimony of Frank G. Taylor.)

off Oregon coast, full cargo of lumber'' refer to?

A. It refers to the message I got from the Merchants' Exchange, late at night. That was the last thing I got.

Cross-examination.

Q. (Mr. BOGLE.) Mr. Taylor, do you remember the message from the Merchants' Exchange aside from the fact that you see an entry in the diary in regard to it?

A. No, I do not, any more than Hill has been in the habit of calling me up at the house at night and reports certain damages, certain cases of disasters.
[431]

Q. It is an inference of yours that you got the information from the Merchants' Exchange, is it not?

A. Well, I feel very positive that I got it from the Merchants' Exchange.

Q. There is no such entry on your diary that you got it there? A. No.

Q. And you have no independent recollection about it? A. No, I have not.

Q. Are you prepared to say, after this lapse of time, that you did not get that information from Mr. Thorndyke? A. Absolutely.

Q. Why is it you are so positive of that, Mr. Taylor?

A. Because I know I was in Tacoma on that day. I know the time I left for Tacoma and I know the time I got back from Tacoma, and I would clearly remember if Mr. Thorndyke had telephoned my

(Testimony of Frank G. Taylor.)

house and would have put it in my diary.

Q. It is a fact that you got the information of the disaster to the "Nottingham" sometime on the day or night of the 14th of October?

A. At night, yes, sir.

Q. And you base the fact that you got it at night from the fact that it is the last entry on the diary?

A. I do.

Q. And you think you got it from the Merchants' Exchange because you are of the impression that you would have recollected if Mr. Thorndyke had personally communicated it to you?

A. It is the custom of the Merchants' Exchange to [432] telephone, and they do telephone me at night. I would not, on a message of that kind, ordinarily put on my diary the fact that I had got it from the Merchants' Exchange.

Q. Why would you not mention the source of your information if it came from them as well as if from other people.

A. The fact that it was reported would almost mean to me that it was the Merchants' Exchange reported it.

Q. It is the custom of owners to report disasters to their vessels, is it not?

A. It is the custom to report to underwriters.

Q. To you, as representative of the underwriters?

A. It is customary.

Q. Very common thing, is it not? A. Yes, sir.

Q. It would have been in the ordinary and usual course of things for Thorndyke to communicate any

(Testimony of Frank G. Taylor.)

information he received, as soon as convenient after he got it? That would have been the ordinary course of dealings would it not?

A. Whether he would communicate to me after nine o'clock at night I would think not.

Q. Well, if you had been out of your office during the business hours throughout the day, it would have been the natural thing for him to do, would it not?

A. Why, I would not think it was to call up a man's home after nine o'clock at night.

Q. Would there be anything out of the way any more for him to do it than the Merchants' Exchange, who had no interest in the matter? [433]

A. No, not a bit.

Q. The fact is, according to your impressions, somebody did communicate that information to you?

A. No question about it.

Q. Did you get any further information about it the next day, Sunday?

A. The only things I got was probably from the papers. I might have read it in the papers. It was in the papers of the 15th.

Q. You say the first time you saw Thorndyke was Monday morning. A. Monday morning, yes, sir.

Q. And he talked over the disaster with you at that time? A. He did, he reported the accident.

Q. Had the vessel been returned to port at that time? A. I do not think so.

Q. You have no recollection of that?

A. I do not think so. I think not. I think she had not been returned to port. She was then in tow

(Testimony of Frank G. Taylor.)

of the Port of Portland tug.

Q. The only information you got either Saturday or Monday morning, so far as your recollection is, that she had had a disaster and had been abandoned at sea, and possibly after she had been picked up by some tug.

A. That was the part that I got, that she had been abandoned by her crew.

Q. Now, the information that you got Saturday, there was no report that she had been picked up by a tug, was there? A. No.

Q. And was there any such information Monday morning? [434]

A. Mr. Thorndyke gave me the information Monday morning.

Q. That she had been picked up by a tug?

A. By a tug.

Q. The formal notice of abandonment was given Monday afternoon?

A. Monday afternoon. Thorndyke came into the office and served notice on me; I remember the instance very well indeed.

Q. Mr. Taylor, what entry did you make in your diary of the interview with Thorndyke on Monday?

A. (Reading:) "Schooner 'Wm. Nottingham' reported picked up by Port of Portland tug 'Walula' and brought into Astoria. Schooner was waterlogged and abandoned when picked up.

Thorndyke called and we discussed 'Nottingham' case.

Gibbs and I discussed 'Wm. Nottingham' accident.

(Testimony of Frank G. Taylor.)

Globe Navigation company through Thorndyke served notice of abandonment of schooner, which I declined by letter.

Thorndyke left for Portland at 4:15 P. M.

I wired A. F. regarding abandonment.

Had two letters from Nan.

Spent evening at home alone, catching up on correspondence for office.

C. P. R. S. S. 'Princess Beatrice' ashore north end Vancouver island. Full cargo salmon."

Q. It would appear from that entry, Mr. Taylor, that when Thorndyke called Monday, he did inform you that the "Nottingham" had been picked up by a tug? A. He did inform me? [435]

Q. Yes. A. I think he did.

Q. And it is your recollection that you never had an interview with Thorndyke until after the tug had picked up the "Nottingham"?

A. That is my recollection.

Redirect Examination.

Q. (Mr. SHORTS.) Are you positive, Mr. Taylor, that the first conversation you had with Mr. Thorndyke concerning this disaster to the "Nottingham," either personally or over the telephone, was when he called on you at your office in the Colman building on Monday the 16th of October, 1911?

A. I am.

Mr. SHORTS.—I offer in evidence this page from his diary of Monday, October 16th, 1911, as an exhibit.

Paper marked Defendant's Exhibit "19," filed and returned herewith.

(Testimony of witness closed.)

Hearing adjourned. [436]

United States of America,
Western District of Washington,
Northern Division,—ss.

I, A. C. Bowman, a Commissioner of the United States District Court, for the Western District of Washington, residing at Seattle, in said District, do hereby certify that

The foregoing transcript, from page 1 to page 305, both inclusive, contains all of the testimony offered by the parties before me in said matter.

The several witnesses, before examination, were duly sworn to testify the truth, the whole truth and nothing but the truth.

I reduced the testimony to writing in shorthand and thereafter caused the same to be typewritten, and I certify that the testimony returned herewith is the testimony given by the several witnesses at the times therein indicated.

Proctors for the parties waived the reading and signing of the testimony given by the witnesses, agreeing that when returned into Court by me that it should have the same force and effect as if so read and signed by them.

The several exhibits, as shown in the transcript and index, are returned herewith.

I certify that I am not of counsel nor in any way interested in the result of this suit.

Witness my hand and official seal this 2d day of
November, 1914.

[Seal]

A. C. BOWMAN,
U. S. Commissioner. [437]

COMMISSIONER'S TAXABLE COSTS:

Plaintiff:

Hearings July 30, 31, Aug. 30, Sept. 2, 3,	
1913.....	\$15.00
Administering oaths to 4 witnesses.....	40
Marking and filing 17 exhibits.....	1.70
Transcript above hearings, 625 fo. at 10c..	62.50
	<hr/>
	\$79.60

Defendant:

Hearings July 31, Aug. 30, Sept. 3, Dec. 29	
1913.....	\$12.00
Administering oaths to 3 witnesses.....	.30
Marking and filing 19 exhibits.....	1.90
Transcript above hearings 220 folios at 10..	22.00
	<hr/>
	\$36.20

[Indorsed]: Testimony reported by Commis-
sioner. Filed in the U. S. District Court, Western
Dist. of Washington, Northern Division. Nov. 2,
1914. Frank L. Crosby, Clerk. By Ed M. Lakin,
Deputy. [438]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

GLOBE NAVIGATION COMPANY,
Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
Respondent.

Tuesday, Nov. 11th.
Wednesday, Nov. 12th.
Thursday, Nov. 13th.

Reporter's Transcript.

INDEX.

	Direct.	Cross.	ReD.	Re-X.
WILFRED PAGE.....	3	17		
J. B. LEVISON.....	20	27	28	28
CHARLES R. PAGE.....	29	34		
JOHN A. BISHOP.....	35	62	70	
GEORGE F. THORNDYKE..	73	75	77	82
JOHN A. BISHOP... ..	88			

CHARLES R. GAGAN,
EDWARD W. LEHNER,
Official Reporters, 329 P. O. Building.

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

GLOBE NAVIGATION COMPANY,

Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,

Respondent.

BE IT REMEMBERED, that on Tuesday, November 11th, Wednesday, November 12th, and Thursday, November 13th, 1913, pursuant to the stipulation hereunto annexed, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, personally appeared before me, Francis Krull, a United States Commissioner for the Northern District of California, duly commissioned to take acknowledgments of bail and affidavits, etc., Wilfred Page, J. B. Levison, Charles R. Page and John A. Bishop, witnesses on behalf of the Respondent, and George F. Thorndyke, a witness on behalf of the Libelant.

H. R. Clise, Esq., appeared as proctor for the Libelant, and Ira A. Campbell, Esq., appeared as proctor for the Respondent, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth. [440]

(It is hereby stipulated and agreed by and be-

tween the proctors for the respective parties, that the depositions of Wilfred Page, J. B. Levison, Charles R. Page and John A. Bishop may be taken on behalf of the Respondent, and that the deposition of George F. Thorndyke may be taken on behalf of the Libelant, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the City and County of San Francisco, State of California, on Tuesday, November 11th, Wednesday, November 12th, and Thursday, November 13th, 1913 before Francis Krull, United States Commissioner for the Northern District of California, and in shorthand by Herbert Bennett.

It is further stipulated that the depositions when written out, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said depositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.) [441]

[Deposition of Wilfred Page, for Respondent.]

WILFRED PAGE, called for the respondent, sworn.

Mr. CAMPBELL.—Q. What is your name?

A. Wilfred Page.

Q. What is your business, Mr. Page?

A. Average adjuster.

(Deposition of Wilfred Page.)

Q. With whom are you associated as an average adjuster? A. George E. Billings Company.

Q. Who is in charge of the adjusting department of George E. Billings & Company? A. I am.

Q. How long have you been engaged in the business of average adjusting?

A. I have been practicing since 1909.

Q. Had you done any adjusting prior to that time?

A. I had never done any adjusting; I have been connected with the business since about 1901.

Q. Were you ever in the employ of Johnson & Higgins, average adjusters? A. Yes, sir.

Q. Are you familiar with the terms and conditions of the San Francisco form of hull time policy?

A. Yes, sir.

Q. Have you prepared an adjustment of the estimated cost of repairing the damages to the "William Nottingham" suffered by her at the time of her dismasting off the Columbia River in October, 1911, so as to show what the Fireman's Fund Insurance Company would be required to pay under its policies covering on that vessel as of partial loss for labor and materials; that is to say, an adjustment which will show what the Fireman's Fund Insurance Company would be required to pay under its policies as for labor and materials had the policies covered on the "Nottingham" against partial loss?

A. Yes, sir.

Q. Have you prepared a formal adjustment?

A. Yes, sir. [442]

(Deposition of Wilfred Page.)

Q. Have you it with you?

A. Yes, sir, (producing).

Q. I will ask you to go through the adjustment and state what you have put in the same; what is your first item?

Mr. CLISE.—I would like to object to the introduction of this adjustment into evidence understanding at this time it is not offered, or to any of the information contained therein, on the ground that the same is incompetent, irrelevant and immaterial.

Mr. CAMPBELL.—I propose to offer it in evidence at the close of this examination.

Mr. CLISE.—It is stipulated between the parties that my objection applies to the entire examination of this witness relative to this adjustment and anything contained therein.

A. The first item is the charge of the Port of Portland for drydocking the vessel on December 21st. This charge is \$79.34, and in accordance with the terms of the policy was charged to the dockage account.

Mr. CAMPBELL.—Q. I want to go through first and get the various items and then we will go back over the analysis. From where did you obtain the dockage charge of \$79.34?

A. From Johnson & Higgins' adjustment of the general average.

Q. Can you refer to the page of the Johnson & Higgins adjustment and show that to me?

A. The first and second item.

(Deposition of Wilfred Page.)

Q. That is the item contained on the fourth page of the Johnson & Higgins adjustment, dated San Francisco, April 30, 1913? A. Yes, sir.

Q. What is your next item which you have put in your adjustment? [443]

A. The bid of the Albina Engine and Machine Works for the repairs as per specifications \$20,950.00.

Q. Was the bid in accordance with the specifications? A. Yes, sir.

Q. What was the total amount of their bid?

A. \$20,950.00.

Q. What is the next item which you have in the adjustment?

A. A credit for certain changes in the specifications which were agreed upon between Captain Gibbs and Mr. Walker.

Q. What was the date of that agreement?

A. March 27th, 1912.

Q. What was the total amount of the credits allowed as per the Gibbs and Walker agreement?

A. \$735.00.

Q. What is the figure allowed for salting vessel?

A. \$600.00.

Q. What is the next item in the adjustment?

A. Allowance for the cost of caulking the stanchions including the removal and replacing of the wash strake.

Q. What amount is that? A. \$277.50.

Q. From where was that obtained?

A. That was obtained from Hall Brothers bid for

(Deposition of Wilfred Page.)

doing the work.

Q. Marked Exhibit 5-A?

A. It is marked Exhibit 8, I believe.

Q. What is the Exhibit 5-A you refer to?

A. That is the agreement between Walker and Gibbs in regard to credit and also this allowance of caulking the stanchions.

Q. What is the next item in the adjustment?

A. That is all.

Q. Have you in your adjustment made a segregation of these various items and charged them to various interests in [444] accordance with the terms and conditions of the policies covering on the "Nottingham"? A. Yes, sir.

Q. How have you charged the first item for dockage? A. In the dockage column.

Q. \$79.34? A. Yes, sir.

Q. Have you made any segregation, for adjustment purposes, of the bid of the Albina Engine & Machine Works? A. Yes, sir.

Q. What is your segregation?

A. The first item is "stores, principally of a consumable nature \$1,500.00."

Q. Where have you charged those?

A. That item is charged to particular average net.

Q. What do you mean by "particular average net"?

A. Particular average net consists of items which are a claim upon underwriters without deduction provided they aggregate the required percentage.

Q. What do you mean by that "they aggregate

(Deposition of Wilfred Page.)

the required percentage''?

A. The ordinary provision of a policy is they are free from claim under a certain percentage.

Q. Assuming that this policy was a policy covering against all particular average, then, under those circumstances, what does particular average net mean? .

A. It means an item for which the underwriters are liable without deduction.

Q. Without what character of deduction?

A. New for old.

Q. That is the one-third off new for old?

A. Yes, sir.

Q. Where did you secure the figure of the \$1,500.00?

A. From the testimony of Mr. Cornfoot.

Q. Can you refer to the pages of his deposition?

A. 13 and 14.

Q. Of Mr. Cornfoot's deposition? A. Yes, sir.

Q. Where have you charged the \$1,500.00, in what column? [445] A. Particular average net.

Q. What was the next segregation under the Albina Engine & Machine Works' bid?

A. Cabin furniture, fixtures, etc., \$1,000.00.

Q. Where have you charged that?

A. Particular average one-third off.

Q. Where did you secure the figure \$1,000.00?

A. From Mr. Cornfoot's testimony.

Q. On what pages?

A. 13 and 14.

Q. Under what provision of the policy did you

(Deposition of Wilfred Page.)

enter the cabin furniture, fixtures, etc., \$1,000.00 to the one-third off column?

A. The San Francisco policy provides that all claims for repairs shall be—

Mr. CLISE. —(Intg.) I object to the notation from the San Francisco form of policy; if the witness will make a reference to the policy itself that is the only one in controversy in this matter.

Mr. CAMPBELL.—Q. Under what section of the policy do you charge the \$1,000.00 to the one-third off column?

A. My recollection is it is provided—

Q. (Intg.) Examine the policy?

A. Section 8, lines 43 to 49 inclusive.

Q. Provided what?

A. Provided that “It is agreed that one-third shall be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured against (except on Anchors, Copper and calking under the Copper), as a commutation for the average difference between new and old; the remains of all articles replaced being considered as salvage, and their proceeds deducted from the gross loss. And it is especially agreed that, instead of [446] deducting one-third for new on the expense of re-metaling, including docking and calking, there shall be deducted two and one-half per cent of the cost of remetaling, docking and calking, after deducting the value of the old metal and nails, for each and every month the metal shall have been on the vessel at the time when it is taken off; and if it shall

(Deposition of Wilfred Page.)

have been on forty months or more, the cost shall be wholly borne by the insured. In case the vessel shall be on a single bottom, the same rule shall apply to docking and calking, but one-twelfth to be deducted from the cost of painting for every month the paint shall have been on the bottom, and when the same shall not have been repainted for twelve months, the whole cost to be borne by the insured."

Q. What is the next segregation of the bid?

A. The item "drydock dues, \$382.00."

Q. From where was that obtained?

A. From Mr. McIntosh's testimony, pages 37 and 38.

Q. Where do you charge that?

A. That is charged in the column marked "dock-age."

Q. What is the next item under segregation of the bid?

A. Painting, bottom, labor and material, \$330.00.

Q. From where did you obtain that?

A. From Mr. McIntosh's testimony, pages 37 and 38.

Q. Where have you charged that?

A. In the column marked "bottom painting."

Q. What is the next item of segregation?

A. Caulking and cementing bottom, \$175.00.

Q. From where did you obtain that?

A. From Mr. McIntosh's testimony, pages 37 and 38.

Q. Where is that charged?

A. Bottom caulking—I should [447] say in the

(Deposition of Wilfred Page.)

column marked "bottom caulking."

Q. What is the next item under the bid?

A. Other repairs; that is to say, the remainder of the bid price, \$17,563.

Q. That is to say, what remains deducting \$1,500.00 for stores; \$1,000.00 for cabin furniture; \$382.00 for drydock dues; \$330.00 for painting bottom; \$175.00 for caulking and cementing bottom?

A. Yes, sir.

Q. Where did you charge the item of \$17,563.00?

A. Particular average one-third off.

Q. Under what provisions of the policy do you enter that item in the one-third off column?

A. Under Section 8, just quoted.

Q. What are the credits which you next show in the adjustment?

A. They are items in an agreement signed by Captain Gibbs and Mr. Walker, dated March 27th, 1912.

Q. What is the first item?

A. The first item relates to the mast steps.

Q. What was the price agreed upon?

A. \$30.00.

Q. What is the next item?

A. Overhauling the forerigging, \$75.00.

Q. The next item?

A. Painting the decks, \$25.00.

Q. The next item?

A. Copper paint for bottom, \$80.00.

Q. The next item?

A. Foresail, foretopsail and forestay sail, \$475.00.

Q. The next item?

(Deposition of Wilfred Page.)

A. Stanchions and iron chock, \$50.00.

Q. What is the sum total of those credits?

A. \$735.00.

Q. Where do you enter those credits?

A. Those credits are entered in the particular average one-third off column with the exception of copper paint for the bottom.

Q. Where is that entered?

A. It is entered—this copper [448] paint for the bottom is credited to the bottom painting column.

Q. Why do you enter all of the credits save the one for painting in the one-third off column?

A. Because they are modifications of the tender for repairs which has been charged to the particular average one-third off column in accordance with Section 8.

Q. That is to say, they were repairs which, if they had been necessary, would have been charged in the one-third off column?

A. They are repairs which are already included in this column of the item, \$17,563.00.

Q. What is your next item?

A. Salting the vessel, \$600.00.

Q. Where is that charged?

A. Particular average one-third off.

Q. Under what provision of the policy was that charge made in that column? A. Section 8.

Q. What is your next item?

A. Caulking the stanchions including removing and replacing the wash strake, \$277.50.

Q. Where is that charged?

(Deposition of Wilfred Page.)

A. Particular average one-third off.

Q. Under what provision of the policy is that charge in that column? A. Section 8.

Q. What is the next item? A. That is all.

Q. Now, referring back to the first entries in the adjustment of \$79.34 for dockage dues and \$382.00 for dockage dues, I will ask you if you have made any apportionment of that charge for dockage over other items of repair? A. Yes, sir.

Q. How have you made that segregation?

A. That item has been apportioned in accordance with the policy conditions under the rules for adjustment of losses, rule two. [449]

Q. Whereabouts on the policy do those rules appear? A. On the back of the policy.

Q. What section of rule two? A. Section two.

Q. Just read the provision, if you will, please?

A. "When a vessel is docked, or hove out for the twofold purpose of remetaling, (or, if on a single bottom, recalking) and repairing keel or bottom, by reason of having collided, or stranded, then the expense of docking or heaving out shall be proportioned *pro rata* upon coppering and (or) calking and other repairs, in the proportion of the number of days' work expended upon each respectively. The above rules shall also apply to wharfage, but no wharfage shall be allowed for, except when indispensably necessary to the repairing of the vessel."

Q. How have you made the apportionment of the dockage dues?

A. The number of days' work for each class of re-

(Deposition of Wilfred Page.)

pairs was testified to by Mr. McIntosh, as follows—

Q. (Intg.) On what pages of his deposition?

A. 37 to 39. Bottom painting 30 days; bottom caulking and cementing 35 days; bottom work other than the other two items 25 days.

Q. What was the total number of days required for doing the painting, caulking and other bottom work as testified to by Mr. McIntosh? A. 90 days.

Q. What have you done with the total cost of docking, to wit, \$461.34 being the total of \$79.34 and \$382.00, using the total number of day's work to do the specified work as testified to by Mr. McIntosh?

A. The 30/90ths of the dockage is charged to bottom painting.

Q. 30/90ths of \$461.34? A. Yes, sir.

Q. How much would that be?

A. \$153.78. [450]

Q. And where is that charged?

A. Bottom painting.

Q. That appears on pages 5 and 6 of the adjustment? A. Yes.

Q. What was the next apportionment made?

A. 35/90ths of the cost of dockage, namely \$461.34 is charged to bottom caulking and cementing.

Q. How much does that amount to?

A. 179.41

Q. And the next item?

A. 25/90ths of the cost of dockage is charged to particular average one-third off.

Q. Amounting to how much? A. \$128.15.

Q. I will ask you whether or not you now have

(Deposition of Wilfred Page.)

transferred the docking charge of \$461.34 appearing on page 6 of the adjustment to the three columns marked "bottom caulking, bottom painting and particular average one-third off"? A. Yes, sir.

Q. Does that eliminate from further consideration the dockage column in the adjustment?

A. Yes, sir.

Q. What has been your next step in the making up of the adjustment?

A. The columns headed "bottom caulking, bottom painting and particular average one-third off,"—

Q. On page 6?

A. (Contg.) —are footed and the totals brought down on page 6.

Q. What is the total of the bottom caulking column? A. 354.41.

Q. That is made up of the original item of \$175.00 appearing on pages 1 and 2 for caulking and cementing bottom, on page 2, of the bottom caulking column and \$179.41 bottom caulking apportionment of the dockage dues? A. Yes, sir.

Q. What is the total of the bottom painting column? A. 403.78.

Q. And is that likewise made up of the item of \$330.00 for [451] painting bottom, labor and material appearing on pages 1 and 2 of the adjustment and on page 4 of the adjustment, after deducting the credit of \$80.00 allowed as per the Gibbs and Walker agreement of March 27th, and the additional figure of \$153.78, being the painting proportion of the dry-dock dues? A. Yes, sir.

(Deposition of Wilfred Page.)

Q. What is the next footing that you have made?

A. The totaling of the particular average one-third column.

Q. What is the total of that column?

A. \$18,913.65.

Q. Appearing on page 6 of the adjustment?

A. Yes, sir.

Q. Is that column made up of the \$18,563.00 appearing as the footing of the particular average one-third off column on page 2, less the credits in that column on page 4, plus the cost of salting and caulking stanchions and removing and replacing wash strake appearing in the one-third off column on page 4, plus the \$128.15 dockage dues charged to the one-third off column appearing on page 6?

A. Yes, sir.

Q. Now, under the policies covering on the "Nottingham" is any proportion of the \$354.41 of the footing of the bottom caulking column on page 6 chargeable to the insurance company?

A. No, sir.

Q. Why not, and if not charged under what provisions do you not make the charge against the insurance company?

A. Section 8 of the policy provides that the cost of recaulking shall be charged to the owners at the rate of two and one-half per cent for each month since the vessel was previously caulked, or if it was over 40 months the entire cost shall be borne by the insured. In Mr. Thorndyke's testimony, page 81, it is stated that the vessel was previously [452]

(Deposition of Wilfred Page.)

caulked in April, 1907, which is over 40 months prior to the date of this accident. Therefore, the entire item is charged to the owners.

Q. That appears charged to the owners as \$354.41 in the owner's column, page 6? A. Yes, sir.

Q. To whom have you charged the bottom painting of \$403.78?

A. Partly to the owners and partly to the underwriters.

Q. Under what provision of the policy has that segregation been made?

A. Section 8 provides that where a vessel is on a single bottom one-twelfth is to be deducted from the cost of painting for each month since the vessel was previously painted and if she has not been painted for 12 months the whole cost to be charged to the insured. It appears from Mr. Thorndyke's testimony, page 81, that the vessel was previously painted in April, 1911, which would be six months prior to this accident. Therefore, one-half is charged to the underwriters and one-half to the owners; six-twelfths to each.

Q. Does that segregation appear at \$201.89 in both the particular average net column and the owners column on page 6? A. Yes, sir.

Q. What are the figures \$6,304.55 appearing in the particular average one-third off column on page 6 and how are they obtained?

A. It is one-third of the cost of the repairs in accordance with Section 8 of the policy.

Q. That is to say, it is one-third of \$18,913.65?

(Deposition of Wilfred Page.)

A. Yes, sir.

Q. Is that the one-third deduction which is made new for old? A. Yes, sir.

Q. Under clause 8 of the policy?

A. Yes, sir. [453]

Q. What is the balance of the \$18,913.65 after deducting the one-third? A. 12,609.10.

Q. Where have you entered that?

A. In the particular average net column.

Q. Now, on page 6 what is the particular average net column made up of?

A. It is made up of \$1,500.00 brought forward from page 2.

Q. Being the stores that are charged net?

A. Being the stores which are charged net; \$201.89 being one-half the painting; \$12,609.10 being the particular average after deducting one-third new for old.

Q. Now, if the "Nottingham" had been insured under these policies against a partial loss or particular average and had been so damaged as to have required the repairs which are set forth in the adjustment, what would have been the amount that the insurance company would have been required to pay under this policy, under an adjustment as of partial loss for labor and materials provided that there had been a full insurance upon the vessel?

A. \$14,310.99.

Q. Now, Mr. Page, the policies covering on the "Nottingham" insured by the Globe Navigation Company in the sum of \$30,000 on a valuation of

(Deposition of Wilfred Page.)

\$45,000. Assuming that those policies had covered against a partial loss and the vessel had suffered the damages set forth in the adjustment, what would have been the amount which the insurance company would have been required to pay under the adjustment as of a partial loss for labor and materials?

A. 30/45ths of that sum.

Q. Will you calculate it out on the adjustment so that you will have the figures there. Just put it in ink? A. \$9,540.66. [454]

Q. Would that equal 50 per cent of the amount for which the vessel was insured? A. No, sir.

Q. Now, I will ask you whether or not that adjustment has been made up in accordance with the settled practice of making adjustments as for partial loss for labor and materials under policies of the kind covering on the "Nottingham" in this case?

Mr. CLISE.—Do I understand that you are asking now as to the particular policy in controversy in this case?

Mr. CAMPBELL.—Yes.

Mr. CLISE.—Then, I object for the additional reason that it is calling for the conclusion of the witness and is not competent.

A. Yes, sir.

Mr. CAMPBELL.—Q. What do you mean by it being on a single bottom referred to in the clause of the policy?

A. It means a vessel that has not a copper sheathing in addition to the regular planking.

Mr. CAMPBELL.—I suppose it will be admitted

(Deposition of Wilfred Page.)

in this case that she was not a copper-bottomed vessel?

Mr. CLISE.—Yes.

Mr. CAMPBELL.—I will offer the adjustment in evidence and ask that it be marked Respondent's Page Exhibit No. 1.

Mr. CLISE.—The same objection.

(The adjustment is marked Respondent's Page Exhibit No. 1.)

Mr. CAMPBELL.—Q. In making up your adjustment did you have before you the testimony taken in the case including Mr. Thorndyke's deposition and the depositions of Mr. Cornfoot and Mr. McIntosh? A. Yes, sir.

Q. Did you also have before you a copy of the specifications [455] on which Mr. Cornfoot made his bid? A. Yes, sir.

Q. I hand you a document and ask you if that is a copy of the specifications which you used?

A. Yes, sir.

Mr. CAMPBELL.—I will offer it in evidence and ask that it be marked Respondent's Page Exhibit No. 2.

(The document is marked Respondent's Page Exhibit No. 2.)

Cross-examination.

Mr. CLISE.—Q. Mr. Page, referring to this first item, "dockage," why do you deduct 50 per cent?

A. We do not deduct that; that is the Port of Portland charge.

Q. The Port of Portland charge was \$74.35?

(Deposition of Wilfred Page.)

A. According to Johnson & Higgins adjustment.

Q. Now, I notice in the analysis of the bid of the Albina Engine and Machine Works that you carry stores in the net column under the particular average without deducting the one-third new for old?

A. Yes, sir.

Q. Is there not any other item contained in the repairs that would not be subject to the deduction of one-third new for old?

A. As I understand the testimony of Mr. Cornfoot, the item for stores, \$1,500.00, and the item for cabin furniture and fixtures, \$1,000.00, were the only two items which could in any way be separated as movable or anything that would not come under the heading of repairs to vessels provided in the clause of Section 8.

Q. Did you examine the report of survey and specifications as prepared by Mr. Walker and an exhibit in this case?

A. I read the specifications for repairs, yes, sir.

Q. Now, Mr. Cornfoot's testimony, as I remember it, was for the movable stores such as provisions and things of that kind, are included in the \$1,500.00 and the \$1,000.00 was [456] *was* for cabin equipment, was it not?

A. Yes, sir, that is my recollection.

Q. Taking the item of navigation instruments that is contained in this report of Mr. Walker, would that be subject to a deduction of one-third new for old?

A. Yes, sir.

Q. Were there any anchor chains or other metal

(Deposition of Wilfred Page.)

articles that were contained in these specifications?

A. Not that I recollect.

Q. All metal articles would not be subject to the deduction, would they?

A. All metal articles, yes, with one exception, I think, the anchors.

Q. But everything else would be subject to the deduction of one-third new for old?

A. In accordance with Section 8 which I have read.

Q. Are there any spars or extra part of ship's tackle provided for in these specifications?

A. I do not recollect any extra parts, no.

Q. If there are you have deducted one-third new for old?

A. If they are included in the bid other than that one item.

Q. Have you examined to know whether there was new rope sails or other parts of the rigging and equipment which had not been used and were to replace the same; was there anything of that kind contained in these specifications?

A. As I understand Mr. Cornfoot's testimony, those are all included in those first two items of \$2500.00.

Q. What did you understand Mr. Cornfoot's testimony included in the item of \$1500.00?

A. Principally stores, or what we might call provisions, but there was also certain chandlery stores he names, if I recollect it, hose and fittings of that kind. [457]

(Deposition of Wilfred Page.)

Q. But you do not include in that \$1500.00 any of the items contained in these specifications other than what are included under subsistence stores, chandlery stores and slop chest; do you include anything other than that or do you include slop chest?

A. As I understand Mr. Cornfoot's testimony the \$1500.00 includes all of those stores.

Q. That is subsistence stores and chandlery stores? A. Yes, sir.

Q. That is all?

A. Of course, there is some of those stores, for instance, the hose which he says specifically should properly be one-third off.

Q. Well, in making this adjustment I understand that you took this report of the survey of Mr. Walker in connection with Mr. Cornfoot's and Mr. McIntosh's testimony to make up this adjustment, did you not?

A. I took the specifications for repairs. I do not think I have seen Mr. Walker's survey.

Q. You have not seen that?

A. I had the specifications under which the tender was made.

Q. But you have not seen Mr. Walker's survey?

A. No, sir.

Q. So, that if Mr. Walker's report or survey would in any way modify Mr. Cornfoot's testimony, would your adjustment be incorrect then in that particular?

A. I think not. As I understand it, the specifications were drawn for the repairs and the tender was

(Deposition of Wilfred Page.)

taken on that basis. I have complied with the specifications and that tender, but that is all that would come in it.

Q. What do you mean by the specifications? Was not Mr. Walker's survey and specifications made a part of the call for the bids?

A. I could not say; according to the testimony which I saw, the specifications for the repairs were put in [458] as Exhibit "F," Libellant's Exhibit "F."

Q. If the Walker survey and specifications call for the taking out, straightening or replacing of any iron or steel parts, you deducted the one-third new for old as against all such items, did you? A. Yes, sir.

Q. If the vessel had the hull or machinery or tackle damaged and the repairs consisted in removing or replacing and otherwise repairing the damaged parts and not replacing them, you deducted the one-third new for old against all such items?

A. Yes, sir, with the exception noted.

Q. You deducted one-third new for old as against everything, save and except the one single item of \$1500.00? A. Yes, sir.

Q. You have not taken the salvage charges into consideration at all in making up this adjustment?

A. No, sir.

Q. Or the expenses incident to it? A. No, sir.

[Deposition of J. B. Levison, for Respondent.]

J. B. LEVISON, called for the respondent, sworn.

Mr. CAMPBELL.—Q. What is your name?

A. J. B. Levison.

(Deposition of J. B. Levison.)

Q. What business are you in?

A. Underwriting.

Q. Do you hold any official connection with the Firemen's Fund Insurance Company?

A. Second Vice-president of the Firemen's Fund Insurance Company.

Q. Are you in charge of any particular department of that company's business?

A. Yes, sir, the marine department.

Q. That was the department in which the policies on the "William Nottingham," in suit, were issued?

A. Yes, sir.

Q. How long have you been engaged in the marine insurance business? A. 35 years. [459]

Q. How long have you been at the head of the marine department of the Firemen's Fund Insurance Company? A. 23 years.

Q. Are you familiar with the policies which were issued on the "William Nottingham"? A. I am.

Q. What, in the parlance of marine insurance business on the Pacific Coast, is that character of policy called. A. Total loss and general average policy.

Q. What I am getting at is this: Is it called a hull time policy?

A. Oh, I did not understand the question. Yes, a hull time policy.

Q. What form of a hull time policy?

A. What is generally known as a total loss policy.

Q. Is it generally known by any name indicative of the place in which it originated?

A. The policy itself?

(Deposition of J. B. Levison.)

Q. Yes, the type of policy?

A. It is generally called "The San Francisco hull type of policy."

Q. How long has that form of policy, save for any marginal clauses, been in use on the Pacific Coast?

A. My impression is that the policy was in use when I came in the business. Of course, I would not want to say that definitely, because I do not remember how long it has been under way.

Q. Has that form of policy been used in insuring wooden sailing vessels of the type of the "William Nottingham"? A. It has.

Q. How generally used?

A. You are speaking now of the San Francisco hull time policy?

Q. Yes. A. Universally.

Q. Are you familiar with the marginal clause appearing on the "Nottingham" policies?

A. Yes, sir, I am.

Q. How long has that clause been used by your company, if [460] at all, on policies covering on vessels of the type of the "Nottingham"?

A. A number of years, I do not know. I could not say just how long, but for quite a number of years.

Q. What character of loss are the policies issuing on the "Nottingham," in suit, intended to cover?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness. The instrument will speak for itself.

A. They are intended to cover against total and/or constructive total loss of the vessel and also general

(Deposition of J. B. Levison.)

average, salvage charges, and in addition to that claims under the three-fourths running down clause.

Mr. CAMPBELL.—Q. That is to say, actual and/or constructive total loss, and general average, salvage charges and claims under the three-fourths running down clause? A. Yes, sir.

Q. What character of claims come under the three-fourths running down clause?

A. Claims against the owner of a vessel for damages done to another vessel for which he may be held liable.

Q. I call your attention to the clause in the body of the policy, which has been deleted, reading: “Unless amounting to at least” (blank) “per cent net,” and ask you why that deletion was made?

Mr. CLISE.—Objected to as incompetent and immaterial.

A. That is made to emphasize the fact that we do not insure the risk of particular average.

Mr. CAMPBELL.—Q. If that clause had not been deleted, would or would not the policy have covered against particular loss and particular average?

Mr. CLISE.—The same objection. [461]

A. That clause is deleted in order, as I said before, to emphasize that fact; if the words were not struck out and the blank space before “per cent net” left, it would leave it uncertain. . .

Mr. CAMPBELL.—Q. In insuring vessels of the type of the “Nottingham,” what is your customary per cent of average which is inserted in the blank ap-

(Deposition of J. B. Levison.)

pearing in that clause?

Mr. CLISE.—The same objection.

A. 5 per cent.

Mr. CAMPBELL.—Q. If the figures “5 per cent” had appeared in the blank in that clause, would or would not the policy have covered against partial loss amounting to 5 per cent or more?

Mr. CLISE.—The same objection.

A. You mean with this marginal clause as it stands?

Mr. CAMPBELL.—Q. We are not discussing the marginal clause; leaving the marginal clause out of the question? A. It would.

Q. Disregarding any marginal clause on the policy, I ask you whether or not, if there had been the figure 5 per cent inserted in the blank in the clause now deleted reading “unless amounting to at least” (blank) “per cent net,” would the policy then have covered against a partial loss amounting to 5 per cent or more?

Mr. CLISE.—The same objection.

A. It would.

Mr. CAMPBELL.—Q. Under what provision, if any, in the printed body of the policy is the insurance against general average provided for?

A. There is no provision of the policy specifically mentioning the risk of general average. [462]

Q. On the policies as written on the “Nottingham,” wherein does the insurance against general average appear? A. In the margin.

Q. Wherein, in the body of the policy, does the pro-

(Deposition of J. B. Levison.)

vision appear covering salvage charges?

A. It does not appear.

Q. Wherein, on the policies covering on the "Nottingham," does the insurance against salvage charges appear? A. On the marginal note.

Q. I will ask you whether or not in issuing these policies on the "William Nottingham," it was the intention of the Firemen's Fund Insurance Company by the endorsement of the marginal clause reading: "This insurance is against total and/or constructive total loss of vessel including general average and/or salvage charges and/or claims under three-fourths running down clause" to nullify, override or modify the printed conditions of the policy under which abandonment could be made as for a constructive total loss?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness. The instrument speaks for itself.

A. It was not.

Mr. CAMPBELL.—Q. Where you are insuring vessels of the type of the "Nottingham" against actual and/or constructive total loss, and general average, salvage charges and claims under the three-fourths running down clause, what character of policies does your company issue?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial as to what they may have issued in other cases. A. Similar policies to this.

Mr. CAMPBELL.—Q. Mr. Levison, in your experience as a [463] marine underwriter, have you

(Deposition of J. B. Levison.)

ever known of any policy which provided for the adding of claims under the three-fourths running down clause to the cost of repairs to a damaged vessel for the purpose of constituting a constructive total loss?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial. A. I have not.

Mr. CAMPBELL.—Q. In all your experience as a marine underwriter, have you ever known of a case where claims under a three-fourths running down clause were added to the physical damages to a vessel or cost of the repairs to make a constructive total loss under a policy covering on that vessel?

Mr. CLISE.—The same objection.

A. I have not.

Mr. CAMPBELL.—Q. What was the purpose of the Fireman's Fund Insurance Company in endorsing the marginal clause on the "Nottingham" policies to which I have referred?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial. The instrument speaks for itself.

A. I should say that was done to indicate the character of insurance that the owners of the "William Nottingham" and the Fireman's Fund Insurance Company had agreed to.

Mr. CAMPBELL.—Q. I will ask you whether or not the marginal clause to which I have referred, adds any indemnity to the policy than is otherwise provided in the policy?

Mr. CLISE.—The same objection.

(Deposition of J. B. Levison.)

A. It does not.

Mr. CAMPBELL.—Q. I call your attention to the valuation of \$45,000.00 in the policy and ask you whether or not that necessarily is the figure of the actual market value of the [464] “Nottingham”?

Mr. CLISE.—The same objection.

A. It is not.

Mr. CAMPBELL.—Q. Are the valuations on wooden vessels placed in the insurance policies generally commensurate with the market values of the vessels?

Mr. CLISE.—The same objection.

A. No, sir.

Mr. CAMPBELL.—Q. How do they correspond generally with the market values of wooden vessels?

Mr. CLISE.—The same objection.

A. The valuation in the policy as a rule has no relation whatever to the market value of the vessel.

Mr. CAMPBELL.—Q. How do the valuations generally compare; which is the higher in the case of vessels of the type of the “Nottingham”?

Mr. CLISE.—The same objection.

A. The valuation for insurance purposes as a rule exceeds the actual value of the vessel.

Mr. CAMPBELL.—Q. What is the purpose of insurance companies in placing higher valuations in policies than the actual market value?

Mr. CLISE.—The same objection.

A. I should say that it is the method of indicating the manner of arriving at the settlement of a claim

(Deposition of J. B. Levison.)

as much as anything else; particular average claim, I mean.

Mr. CAMPBELL.—Q. Was there any difference made at the time the “Nottingham” policies were issued between the rates on policies covering against partial loss and policies covering against actual and /or constructive total loss, and general [465] average, salvage charges and claims under the three-fourths running down clause?

Mr. CLISE.—The same objection.

A. There was.

Mr. CAMPBELL.—Q. What was the going rate at that time for policies covering against partial loss with a 5 per cent average?

Mr. CLISE.—The same objection.

A. The minimum rate for vessels of the type of the “Nottingham” was 6 per cent for what we call the full policy.

Mr. CAMPBELL.—Q. What do you mean by a full policy?

A. That is a policy covering 5 per cent particular average and total loss, general average, salvage charges and the three-fourths running down clause.

Q. What was the reduction rate made for the deletion partial loss liability?

Mr. CLISE.—The same objection.

A. 1 per cent.

Cross-examination.

Mr. CLISE.—Q. If the words “unless amounting to at least” (blank) “per cent net” in the first clause had not been stricken out and the marginal clause

(Deposition of J. B. Levison.)

not inserted, then the policy would have covered particular average?

A. The policy would never have been written that way.

Q. If you had inserted, say, 5 per cent in that blank, then it would have covered particular average?

A. If we had inserted 5 per cent in that blank then it would have covered particular average.

Q. If the words 5 per cent had been inserted in the blank in the first paragraph and the marginal clause been added [466] what addition would be made in the policy?

A. The marginal clause never would have been added, because if we had 5 per cent average policy, then there would have been no occasion to put that clause in.

Q. Would the omission of these words and the addition of the marginal clause—that added then an additional liability to the company, did it not?

A. No, sir.

Q. Was the liability of the company wholly governed by the marginal clause?

A. No, sir, I should say that that marginal clause was inserted to emphasize the character of insurance when taken in conjunction with the deletion of these words we have referred to.

Redirect Examination.

Mr. CAMPBELL.—Q. Mr. Levison, do you remember Mr. Clise's and Mr. Thorndyke's visit here in February, 1912, after the settlement of the salvage

(Deposition of J. B. Levison.)

claim by the Port of Portland? A. I do.

Q. Was that visit made here at your request?

A. I do not recall the circumstances surrounding that visit. I should say I did not ask Mr. Clise or Mr. Thorndyke to come to San Francisco, if that is what you mean.

Q. Have you any recollection of having asked them to come to San Francisco? A. I have not.

Recross-examination.

Mr. CLISE.—Q. Your answer to this last question was confined to yourself personally, I suppose?

A. That would apply to either myself, or the company.

Q. Would it apply to yourself personally, or would it apply to every one in the employ of the company?

A. I should say that Mr. Clise and Mr. Thorndyke would not have been asked to [467] come to San Francisco by any employee without my knowledge.

Mr. CAMPBELL.—Q. Would any one in your company have authority to invite Mr. Clise or Mr. Thorndyke to come to San Francisco without your authorization? A. No, sir.

Mr. CLISE.—Q. Sometimes cannot people in your employ do things without authority?

A. That can be said in every business, but in this case, it was such an important matter and I was in touch with it, so I do not think any one in our office would ask Mr. Clise or Mr. Thorndyke to come to San Francisco without my authority.

[Deposition of Charles R. Page, for Respondent.]

CHARLES R. PAGE, called for the respondent, sworn.

Mr. CAMPBELL.—Q. You are the same Mr. Page who testified in this case at Seattle?

A. Yes, sir.

Q. Will you state whether or not E. M. Cherry at Astoria, Oregon, is or was at the time the “Nottingham” sailed out of the Columbia River on the voyage on which she was damaged, an agent of the Fireman’s Fund Insurance Company?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial.

A. He is not now and never has been.

Mr. CAMPBELL.—Q. Do you know what his initials are?

A. E. M. Cherry, if I am not mistaken.

Q. Was his father dead prior to the “Nottingham” disaster?

A. Yes, sir, to the best of my knowledge.

Q. Did the Fireman’s Fund Insurance Company ever pay the Globe Navigation Company or its agent the Fireman Fund’s proportion of the general average charge against the “Nottingham” as stated in the general average adjustment prepared by [468] Johnson & Higgins? A. They have, yes.

Q. Can you refer to your records and tell me what amount of the general average on the vessel the insurance company paid to Johnson & Higgins?

A. I can, yes.

Q. To whom was the money paid?

(Deposition of Charles R. Page.)

A. Will you let me explain that in my own way?

Q. Yes.

A. On the 7th of February, 1912, there was paid to the Secretary of the Board of Marine Underwriters of San Francisco \$2,000.00 for the purpose of and subject to the conditions of an agreement dated February the 7th, 1912, and signed by Johnson & Higgins' agents by telegraphic authority dated February the 7th, 1912, for the Globe Navigation Company, it being understood that that \$2,000.00 was to be sent to Mr. Thorndyke, I believe it was, who was then in Portland for the purpose of settling the amount agreed upon with the Port of Portland. That is \$2,000.00 of the amount which the Fireman's Fund has paid. The Fireman's Fund has since paid—I have not either the voucher or the date of the payment before me, but I know it to be a fact that we have paid to Johnson & Higgins \$1549.09 representing the balance due to the Globe Navigation Company in respect of the total amount shown to be due as per Johnson & Higgins adjustment.

Q. The total amount of what?

A. The total amount of general average and salvage charges.

Q. The total amount charged against whom?

A. Fireman's Fund Insurance Company on account of its two policies.

Q. On account of what?

A. On account of two policies aggregating \$30,000.00 out of a total of \$45,000.00, insured valuation; in other words, two-thirds.

(Deposition of Charles R. Page.)

Q. On the hull of the vessel?

A. On the hull of the [469] "William Nottingham."

Q. Under what clause of the policies covering on the "Nottingham" was that payment made?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness; the policy speaks for itself.

A. Under the marginal clause.

Q. Any other clauses in the policy?

A. The general wording of the policy. If I may refer to the policy I can quote that wording. It occurs in Section 3, and is as follows: "And all other losses and misfortunes that shall come to the hurt or damage of the vessel hereby insured, or any part thereof, to which Insurers are liable by the Rules and Customs of Insurance in San Francisco, including the Rules for Adjustment of losses printed on back hereof and the provisions of the Civil Code of California, excepting such losses and misfortunes as are excluded by this Policy."

Q. Mr. Clise testified in Seattle that the Fireman's Fund Insurance Company had paid five-sixths of the expenditures incident to the salvage suit? Was that correct?

A. I do not understand that we have.

Q. Are you familiar with the adjustment made up by Johnson & Higgins? A. Yes, sir.

Q. Were all of the expenses and salvage charges which would constitute claims against the Fireman's Fund Insurance Company under its policies

(Deposition of Charles R. Page.)

included in the general average statement prepared by Johnson & Higgins?

A. I believe they were, yes.

Q. After the settlement of the salvage claim of the Port of Portland what, if any, dispute remained between the Fireman's [470] Fund Insurance Company and the Globe Navigation Company?

A. Dispute as to whether or not we were liable for a total loss under these policies in suit.

Q. Any other dispute?

A. Not to my knowledge.

Q. Did you ever request Mr. Clise and Mr. Thorndyke to come to San Francisco in February of 1912? A. I believe not.

Q. Have you any recollection?

A. I have no recollection of it.

Q. Have you any recollection of ever being directed by any officer or employee of the Fireman's Fund Insurance Company to made such request?

A. I have not.

Q. I call your attention to the marginal clause on the policies covering on the "Nottingham": "This insurance is against total and/or constructive total loss of vessel including general average and/or salvage charges and/or claims under three-fourths running down clause," and ask you whether or not that clause was intended to nullify, override or modify any of the conditions of the policy under which abandonment could be made as for a constructive total loss?

Mr. CLISE.—Objected to as incompetent, irrele-

(Deposition of Charles R. Page.)

vant and immaterial and calling for the conclusion of the witness. The policy speaks for itself.

A. Most certainly not.

Mr. CAMPBELL.—Q. What was the purpose of inserting the marginal clause just referred to on the policy?

Mr. CLISE.—The same objection.

A. To briefly describe the character of the insurance and to put the assured on his notice that the policy was one against actual and/or constructive total loss, against [471] the risk of general average and/or salvage charges and against the risk of claims which are generally covered under the clause known as the running down clause.

Mr. CAMPBELL.—Q. What was the purpose in deleting the clause on the policy reading: "Unless amounting to at least" (blank) "per cent net"?

Mr. CLISE.—The same objection.

A. To make the policy free of particular average.

Mr. CAMPBELL.—Q. Now, Mr. Page, have you ever known of a policy which provided for the adding of claims under a three-fourths running down clause, to the physical damages to a vessel, or cost of repairs, for the purpose of making a constructive total loss under a hull policy?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial.

A. I have not.

Mr. CAMPBELL.—Q. Have you ever known of a case where claims under a three-fourths running down clause were added to the physical damages to a

(Deposition of Charles R. Page.)

vessel or the cost of repairing some physical damages to make a constructive total loss under a hull policy?

Mr. CLISE.—The same objection.

A. I have not.

(An adjournment is here taken until to-morrow, Wednesday, November 12th, 1913, at 10 o'clock A. M.) [472]

Wednesday, November 12th, 1913.

CHARLES R. PAGE, direct examination resumed.

Mr. CAMPBELL.—Q. Are you familiar with the specifications on which the bid of the Albina Engine & Machine Works was made?

A. Yes, sir, I have been over them several times.

Q. Have you gone over the adjustment that was prepared by Mr. Wilfred Page showing an adjustment as a partial loss for labor and materials based upon the items contained in the adjustment?

A. I have, yes.

Q. Are you or are you not familiar with the settled practice of adjustments as for labor and materials on the Pacific Coast under policies of the character of those covering on the "William Nottingham"? A. I am.

Q. Will you state whether or not the adjustment prepared by Mr. Wilfred Page as of partial loss for labor and materials of the items contained in the adjustment is correct, or not?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial, the witness not showing him-

(Deposition of Charles R. Page.)

self qualified to answer.

A. It is.

Mr. CAMPBELL.—That is all.

Cross-examination.

Mr. CLISE.—Q. Mr. Page, you do not intend to say that the adjusters have included in the adjustment—I am referring to the one made by Johnson & Higgins, includes anything except based upon information furnished to them by one of the interested parties? A. I do not.

Q. All adjusters do is to make up an adjustment upon information [473] furnished by one or the other of the parties? A. I believe so.

Q. They have no personal knowledge as to the matters that may be in controversy between the insurance company and the owners or any of the parties and the insured?

A. I believe they make it a settled practice to inquire into the facts as to whether or not they have all vouchers before them, all information before them.

Q. If, for any reason, this information has not been given them, why then that charge is omitted, is it not?

A. Yes, sir, if they could not have obtained it.

Mr. CLISE.—I think that is all.

[Deposition of John A. Bishop, for Respondent.]

JOHN A. BISHOP, called for the respondent, sworn.

Mr. CAMPBELL.—Q. What is your name?

A. John A. Bishop.

(Deposition of John A. Bishop.)

Q. What is your business?

A. Average adjuster.

Q. Have you any connection with the firm of Johnson & Higgins, average adjusters?

A. Yes, sir.

Q. What is your connection with them?

A. Manager of the adjusting department.

Q. Did you make up a general average adjustment on the "William Nottingham" arising out of the disaster to that vessel when she was dismasted off the Columbia River on or about the 9th day of October, 1911? A. Yes, sir, we did.

Q. Did you have personal charge of the making up of that adjustment? A. I did.

Q. By whom were you appointed to make up the adjustment?

A. By the owners of the vessel, the Globe Navigation Company.

Q. Are you or are you not familiar with the settled practice [474] of adjustments, both particular and general average on the Pacific Coast?

A. I am.

Q. How long have you been engaged in the business on this coast? A. Since 1902.

Q. Prior to that time, had you had any experience in making up adjustments?

A. Of making up and examining adjustments.

Q. Where? A. In Liverpool.

Q. How many years have you been engaged in the business of an average adjuster?

A. I have been an average adjuster for 11 years;

(Deposition of John A. Bishop.)

ever since I came to this coast.

Q. Have you or have you not, in all your experience in the average adjusting business, ever known of a policy which provided that claims under a three-fourths running down clause might be added to injuries or cost of repairing injuries of an insured vessel so as to make a constructive loss of such?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness.

A. No, sir, I have not.

Mr. CAMPBELL.—Q. Have you, in all your experience as an average adjuster, ever known of a claim under a three-fourths running down clause having been added to the cost of repairing an injured vessel to make a constructive total loss of such?

Mr. CLISE.—The same objection.

A. No, sir.

Mr. CAMPBELL.—Q. Have you a copy of the general average adjustment which you made up on the "William Nottingham" to which I have previously referred? A. I have our rough office copy.

Q. What do you mean by your rough office copy?
[475]

A. The copy from which the fair copy is made.

Q. That is, you have the original copy of the adjustment prepared by you? A. Yes, sir.

Q. And the other copies which are out are typewritten copies of the original?

A. Of the original, yes, sir.

(Deposition of John A. Bishop.)

Q. Will you state how you acquired the information and obtained the items which you used in making up the adjustment?

A. They were furnished us by the Globe Navigation Company.

Q. You are appearing here under subpoena?

A. I am.

Q. Were you requested to voluntarily appear before service of this subpoena? A. I was.

Q. By me? A. Yes, sir.

Q. Did you refuse to come? A. I declined.

Q. Will you state whether or not you have included in the general average adjustment all of the expenditures connected with the salving of the "William Nottingham" by the tug "Wallula" and her crew, operated by the Port of Portland?

A. So far as I know we have.

Q. Has there been omitted from the adjustment any expenditures incurred by the Globe Navigation Company touching the salvage claims against the "William Nottingham" for the salving of that vessel?

A. No, sir, every bill that we have received has been included in the adjustment.

Q. Was any request of any character made by you upon the Globe Navigation Company for presentation of bills or statements showing the expenditures of moneys which might properly go into the general average adjustment?

A. We had some correspondence, I think, in regard to the bills, but I could not swear as to whether

(Deposition of John A. Bishop.)

we found any omitted for which we asked. [476]

Q. Just describe to the Court what you did in acquiring the necessary information to prepare this adjustment.

A. We followed our usual practice in this case. The bills are furnished us by the owners. We go through the bills and if there is anything which we think has been omitted, we ask for it and ask whether there are any further bills to be included and then when the adjustment is completed we submit it to the owners so they can run through it and see whether there is anything omitted, or not.

Q. Did you or did you not make request upon the Globe Navigation Company for all bills in connection with the disaster which might go into the general average adjustment?

A. My impression is that all the bills were furnished us. I cannot recollect any bills that we asked for specifically, but upon the completion of the adjustment, the rough was sent to the owners for them to run through and see if there was anything omitted.

Q. It was? A. Yes, sir.

Q. To whom did you send the rough adjustment?

A. The Globe Navigation Company.

Q. Where did you send it? A. Seattle.

Q. Do you know the manager of the Globe Navigation Company? A. I do.

Q. What is his name?

A. Mr. Thorndyke.

Q. Did you receive the adjustment back, the

(Deposition of John A. Bishop.)

rough adjustment back from the Globe Navigation Company? A. We did.

Q. Do you know who sent it back to you?

A. No, not without looking up the letter. [477]

Q. Have you a letter in your office?

A. Yes, sir, I believe we have.

Q. Will you send for your files and have them brought up? A. I will if you wish.

Q. State whether or not there was any correction of the adjustment made by the owners.

A. Before answering that I think I would like to see the letter of reply.

Q. Have you the vouchers and bills upon which the adjustment was made up?

A. I think those were returned.

Q. When was the adjustment finally completed by your office? A. April 30th, 1913.

Q. Do you recall whether or not you were in correspondence at all with the Globe Navigation Company from the time of the accident up to the completion of the adjustment respecting the preparation of the general average statement?

A. Yes, sir, we had considerable correspondence at the commencement of the case and then there was a considerable interval, I think, and then there was further correspondence and we closed the case.

Q. Now, I hand you the complaint in this action and call your attention to the items set forth in paragraph 9 and ask you whether or not you examined them? (Handing.) Have you examined the items contained in paragraph 9 of the complaint?

(Deposition of John A. Bishop.)

A. I have.

Q. Will you examine your general average adjustment and state whether or not all of the items set forth in Paragraph 9 of the complaint are included in the general average adjustment?

A. They are all included in it with the exception of this item, \$66.90, and I do not quite know what that is for; it may be in there among a number of [478] items.

Q. Paid the Port of Portland miscellaneous charges, \$66.90?

A. Yes, sir. We have a number of small items here that may make up that amount.

Q. What other items of expense in connection with the salvage have you charged in the adjustment which are not contained in Paragraph 9?

A. Purely in connection with the salvage?

Q. Yes.

A. That is in connection with the statement of the salvage claim, or do you include discharging cargo?

Q. Including the salvage claim now?

A. There are some items here for riding lights at Astoria Harbor and a number of small items, repairs to donkey-boiler; these are items paid to Port of Portland.

Q. How much are the repairs to the donkey-boiler?

A. \$5.10. Launch hire tending "William Nottingham" in Astoria Harbor.

Q. How much is that?

A. \$12.00. And attorneys disbursements and

(Deposition of John A. Bishop.)

telegrams \$11.86. Sundries \$18.14. Bond \$5.00. United States District Court \$4.00, amounts paid to the United States Marshal. Those seem to be all of the expenses in connection with this salvage.

Q. Do you recall whether or not you requested the Globe Navigation Company for all bills incurred in connection with the salvage?

A. I don't remember whether we made an actual demand. I think we were sent them all and then the Globe Navigation Company checked them over, checked over all the bills in the statement to see that they were complete.

Q. What other items of expenditure other than specifically [479] connected with the salvage have you included in the adjustment?

A. Nothing protest, \$5.00. Launch pilot, \$10.00. Frank Walker survey, \$150.00 allowed out of a bill of \$750.00.

Q. How much did you allow in general average?

A. \$150.00. Survey fee for examination on dry-dock, \$10.00. That is in the Port of Portland bills for \$354.15.

Q. I call your attention to an item for \$1245.30, headed Brown & McCabe, stevedores.

A. That is included in this Paragraph 9.

Q. What was that for?

A. In this Paragraph 9 you have got it \$1245.50 and we have it for \$1245.30.

Q. What was that for?

A. That was for discharging cargo and tallying the lumber.

(Deposition of John A. Bishop.)

Q. What is the item designated Port of Portland for dockage, \$99.34?

A. That is a total carried forward.

Q. At the foot of the column under that item, it appears \$99.34. What were those items for?

A. That item includes dockage, \$74.34; labor hauling into dock, \$5.00; and berth at drydock wharf December, 1911, 10 days, \$20.00.

Q. How much of the \$99.34 have you charged to general average? A. \$20.00.

Q. For the berthing of the vessel?

A. For the berth of the vessel, yes.

Q. What is the next item that you have charged to general average?

A. There is \$38.00, which is part of the \$98.00 which is included in this Paragraph 9 of the complaint. \$638.79, that is also included. And \$150.00 which is also included in Paragraph 9.

Q. Referring to the item total \$966.13, appearing as the Port of Portland on page 9, of those expenditures have you charged [480] to general average the cost of towing the "Nottingham" from Astoria to Portland? A. We have, yes, \$150.00.

Q. Where did you charge the storage of lumber?

A. Storage of lumber is charged to general average.

Q. Are there any other items included in the general average adjustment not entered in the Paragraph 9 expenditures?

A. E. A. Strout & Company bond, \$5.00.

(Deposition of John A. Bishop.)

Q. That is covering the vessel while she was being towed?

A. That is in connection with towing the vessel to Portland. \$4.00 United States District Court for advance of railroad fare to the United States Marshal. \$405.29 for the services of the United States Marshal which is included in Paragraph 9 for \$405.31.

Q. Where are those expenses charged?

A. General average. And there is \$15.20 for fares of Mr. H. R. Clise and G. F. Thorndyke from Seattle to Portland, \$15.20.

Q. I see an item for \$56.70 for round trip ticket from Seattle to San Francisco, to whom is that charged? A. To the owner.

Q. Why didn't you charge that in general average?

A. Because we did not think it belonged in general average.

Q. Why not?

A. It was for a round trip from Seattle to San Francisco and return. It was not in connection with the discharge of the cargo or the settlement of the salvage. It was after that time, after that had been settled.

Q. What was the item of \$20.50?

A. That was for the expenses of Mr. Clise to Portland upon presentation of motion to Judge of District Court for removal of schooner "William Nottingham" from Astoria to Portland.

Q. What was the item just above that for \$38.00;

(Deposition of John A. Bishop.)

which was [481] charged to owners; why was not that charged in the general average?

A. My recollection is that the question of general average was not discussed at that time.

Q. What was the item for?

A. It is for expenses to San Francisco upon suggestion of adjusters for conference in regard to the situation the "Nottingham" was then in.

Q. Any other expenses of Mr. Clise?

A. Yes, sir, \$23.10 for expenses on trip to Portland on settlement of libel for the Port of Portland. We have allowed \$250.00 out of a charge of \$500.00 for Mr. Clise's services in re libel of the "William Nottingham."

Q. Why did you not allow the whole \$500.00?

A. In general average the item included one trip to San Francisco and two trips to Portland. We allowed \$250.00 as applying to the expenses, his fee in connection with the libel.

Q. Why didn't you allow the other fee?

A. Because it was not a matter that concerned either the hull underwriters and cargo as general average; merely the protection of the owner's interests.

Q. Under their policies?

A. I am not certain about that now. There were a good many things discussed at that time, and I am not sure about it now. The next item is \$37.50 for Mr. Thorndyke's expenses from Seattle to Astoria in October.

Q. That is charged where?

(Deposition of John A. Bishop.)

A. That is charged to general average. Then there is \$33.20 for Mr. Thorndyke's expenses to Portland, Oregon, and return in October 25th to 27th. That was in connection with the salvage. There is an item of \$72.60 for Mr. Thorndyke's personal expenses for three trips to Portland during November on account of interviews with Port Commission, contracts for towing and discharging [482] "William Nottingham."

Q. Where have you charged that?

A. That is charged to general average.

Q. What is the next item of \$107.00?

A. That is personal expenses of Mr. Thorndyke's trip to San Francisco to consult adjusters and underwriters, November 12th to 18th.

Q. Did you charge that to general average?

A. No, sir, we charged that to the owners.

Q. Why not?

A. Because I do not think that it was a matter in connection with salvage or general average that was discussed at that time.

Q. What is the next item?

A. 27.80, Mr. Thorndyke's expenses for two trips to Portland in December. That is a division of his bill of \$51.40; we allowed \$27.80 to general average and \$23.60 to the owner's column.

Q. What was the basis of that segregation of that apportionment?

A. The trips were in connection with the discharge of the cargo and the salving of the damage to the vessel.

(Deposition of John A. Bishop.)

Q. Which portion of the expenses did you make the allowance in general average?

A. There were fares amounting to \$30.40; we allowed \$15.20 for general average.

Q. For what part?

A. There is a note: "December 1st, 2d, and 3d, account of discharging cargo. 20th and 21st account survey of vessel."

Q. What was the basis then of the apportionment?

A. The proportion which we considered proper in connection with the survey of the vessel to the owners.

Q. Why didn't you charge that to general average?

A. Because the damage to the vessel was particular average.

Q. What is the next item?

A. The next item is \$34.20 [483] and is charged to the owners; not allowed in general average.

Q. What is that for?

A. Mr. Thorndyke's trip to Portland in January 11th to 13th, receiving tenders for repairs.

Q. Why didn't you charge that to general average?

A. Because repairs are particular average and not connected with general average.

Q. What do you mean by particular average?

A. The sole concern of the owners so far as this statement is concerned. \$39.20, Mr. Thorndyke's expenses for trip from Seattle to Portland in February, 1912. That was in connection with the salvage.

(Deposition of John A. Bishop.)

That is allowed in general average. The next bill we have allowed is \$213.50 in general average out of a bill of \$556.05.

Q. What was the basis of that apportionment?

A. These were the master's expenses. Shall I give you the items which we allowed in general average?

Q. Yes, give all the items that you have allowed. I want to get at the basis of the apportionment; why you charged part to the general average and part to the owners.

A. We have allowed in general average the expenses of Captain Swenson, I think, it is up to the time the cargo was discharged. I will give you the items. Expenses at Astoria, 5 days, \$10.00. That is from October 14th to October 18th. And there is October 18th fare to Seattle, \$9.20. Telegram to San Francisco, \$2.80. Fares to Astoria, including Mr. Brown and self—Mr. Brown was the mate, \$19.20; half of that was allowed to general average. Expenses of Mr. Brown and self at Astoria, 4 days at \$2.00 per day each, \$16.00; one-half of that was allowed to general average, \$8.00. November the 12th, fare to Seattle, Mr. Brown and self, \$12.20— [484]

Q. (Intg.) When you speak of self you mean Captain Swenson?

A. Yes, sir. Meals for Brown and Captain Swenson, \$1.00. Fares to Astoria for Mr. Brown and Captain Swenson, \$19.20, of which \$9.60 was allowed to general average. Meals at Astoria for Mr. Brown and Captain Swenson, \$2.00 for which \$1.00 is al-

(Deposition of John A. Bishop.)

lowed to general average. Board and lodging at Astoria for Mr. Brown and Captain Swenson, \$4.00; \$2.00 is allowed to general average. Board and lodging for Captain Swenson, 9 days at \$2.00, \$18.00 and that is all allowed to general average. That was between November 1st and November 9th. Stationery and stamps, \$2.00 and allowed to general average. Daily expenses from December 10th to January 1st, \$22.00 allowed to general average. Fare to Seattle, including meals, \$7.60 allowed to general average. Expenses at Seattle January 2d, to January 4th, \$3.00 allowed to general average. Fare to Portland including board and lodging, January 5th, \$7.60 allowed to general average. Expenses January 5th to January 10th at Portland, \$10.00 allowed to general average. Error in charge of expense item from December 10th to January 1st, \$22.00 allowed to general average.

Q. That was what?

A. That was at Portland from December 10th, to January 1st.

Q. That was an error you say?

A. Yes, sir, there was a charge here—

Q. (Intg.) How did you ascertain that error?

A. There was a charge—

Q. Upon what information?

A. There was a voucher for it. Daily expenses of Captain Swenson from January 11th to February 6th, \$27.00 that was allowed to general average. Board for Captain Swenson from January 11th, to February [485] 6th, \$27.00 and allowed to general

(Deposition of John A. Bishop.)

average. Board for the master from February 7th to April the 6th, \$60.00 of which \$8.00 is allowed to general average. That is all.

Q. What were the reasons for allowing those items in general average?

A. We allowed them up to February 15th, when the vessel was abandoned and the cargo turned over to the cargo underwriters.

Q. What were the nature of the services for which the expenses were allowed?

A. Some one had to be left in charge of the vessel at Astoria and in charge of the cargo.

Q. Were these all after separation of interests?

A. After the cargo had been discharged and the vessel abandoned voyage, the cargo was turned over to the underwriters.

Q. Do you allow any expenditures after a separation of interests in general average? A. No, sir.

Q. You then speak of \$500.00 allowance of the master's wages?

A. We have allowed \$500.00 for the master's wages from October 15th, 1911, when the schooner was towed into Astoria until February 15th, when the cargo was turned over to the owners or underwriters of the cargo. The next item allowed under general average is \$4.22 for long distance telephones in November, 1911, January and March, 1912.

Q. Why did you not allow the item above that of \$93.66?

A. Services of first mate? We have not allowed

(Deposition of John A. Bishop.)

any portions of the mate's charges as general average,

Q. What is the next item?

A. \$23.54, telegrams from October to April; we allowed \$23.54 out of a total of \$52.88.

Q. In making that apportionment did you have a statement from the owners as to what those telegrams were for?

A. We generally see the telegrams, and I think we actually [486] did see them in this case. \$14.00 is the next item allowed in general average, that is for wharfage. We have allowed the wharfage up to and including February the 15th.

Q. That is when the separation of interests took place.

A. Yes, sir that is when the separation of interests took place.

Q. Did you allow the next item of the shipping commissioner for \$2.50 in general average?

A. No, sir, that is charged to the owners. \$5.70, that is charged to the owners.

Q. What is that charge of Mr. Nelson's?

A. I do not know what it was. We have nothing against it here at all.

Q. That is charged to the owners?

A. That is charged to the owners.

Q. Did you have before you the pay-roll of \$545.17? A. Yes, sir.

Q. Where did you charge that?

A. To the owners.

Q. Why did you not charge that to general average?

(Deposition of John A. Bishop.)

A. I think that pay-roll is up to October the 14th.

Q. The day when the crew were returned to Astoria? A. Yes, sir.

Q. The rest of the items contained in the adjustment are made up of the adjuster's commission for disbursing and advancing? A. No, sir.

Q. What is the next item of \$362.74?

A. That is commission for making disbursements.

Q. To whom was that allowed?

A. That was allowed to the people who paid the bills.

Q. Who were they? A. The owners.

Q. What is the next item of interest on general average?

A. Interest on general average disbursements from the time [487] the bills were paid to the time this adjustment was completed and the money collected.

Q. To whom does that interest go?

A. The owners who paid the bills. It is divided subsequently between the underwriters and owners. The underwriters advanced them money and they were credited with the proportion of the interest.

Q. How much of that \$435.29 was credited?

A. \$298.54, the underwriters were credited with.

Q. The next item is \$30.00 committee on adjustment?

A. That is the adjustment committee's fee of the Board of Marine Underwriters.

Q. San Francisco? A. Yes, sir.

Q. Was this adjustment submitted to the Board of

(Deposition of John A. Bishop.)

Marine Underwriters? A. Yes, sir it was.

Q. Was it approved or disapproved by them?

A. It was approved.

Q. What is the \$10.00 next appearing?

A. That is for notary charges for drawing affidavits.

Q. Are those the affidavits which appear in the first part of the adjustment? A. Yes, sir.

Q. What is the next item of \$10.00?

A. Drawing average bond and procuring signature.

Q. To whom did that payment go?

A. I think the adjusters; we drew the average bonds.

Q. What is the next one?

A. A bill for telegrams, \$17.25.

Q. The whole bill appears to be \$28.21; what was the basis of that apportionment?

A. We allowed the proportion of telegrams applying to general average and the balance charged to the owners.

Q. Were those telegrams sent by your office?

A. Those were [488] sent by our office.

Q. The next item of \$500.00 for services of the adjusters?

A. \$250.00 for making up the general average.

Q. Where did the other half go?

A. To the owners.

Q. What is the next item of \$409.94?

A. Collecting commission and settling general average.

(Deposition of John A. Bishop.)

Q. To whom did that commission go?

A. That I think is divided; I think we got a portion of it and I think the owners got a portion of it.

Q. What was the sum total of the general average? A. \$8780.01

Q. Was that subsequently apportioned between the various interests? A. Yes, sir.

Q. Is that shown in the adjustment?

A. It is shown on the following pages.

Q. What was the apportionment and how was it made?

A. The vessel was valued in damaged condition at \$8500.00 and pays its proportion \$5637.46. The cargo paid on the value of \$4738.24, \$3142.55.

Q. The latter figure was its proportion of the general average? A. Yes, sir.

Q. Did you make any segregation between the owners and the underwriters on the vessel of the proportion of the general average charged to the vessel.

A. We did.

Q. What segregation is that?

A. The vessel's proportion of general average \$5637.46, the underwriters on the vessel insured \$30,000.00 valued at \$45,000.00, they paid \$3758.31.

Q. Now, when you say "valued \$45,000.00" what do you mean by that? A. Valued in policy.

Q. Of the vessel?

A. Of the vessel in the policy. [489]

Q. Can you tell what credit of interest was allowed to the underwriters on the vessel?

A. \$119.42, that is the interest and then \$99.51

(Deposition of John A. Bishop.)

was the proportion of disbursing commission.

Q. What was the total credit allowed?

A. \$218.93.

Q. What was the total amount after allowing the credit just referred to payable by the underwriters on the vessel? A. \$3539.38.

Q. Did you ever receive on behalf of the Globe Navigation Company the payment of the balance just given? A. Yes, sir.

Q. From the Firemen's Fund Insurance Company?

A. There was an original payment on account made by the underwriters.

Q. What was it?

A. \$1990.29, that is the net payment on account which they made. They paid a little more than that, but there was an amount refunded at a later date. That left a balance due from the underwriters after giving them credit for the interest and disbursing commission applying to their payment on account \$1549.09.

Q. Did you collect that amount of money from the Firemen's Fund Insurance Company?

A. That was paid.

Q. Has the Firemen's Fund Insurance Company paid all of the general average chargeable against it as underwriter on the vessel under this adjustment?

A. I believe so, yes.

Q. Will you state whether or not this adjustment is made up in accordance with the settled practice on the Pacific Coast? A. It is.

(Deposition of John A. Bishop.)

Q. Have you the documents you sent for at your office? A. Yes, sir.

Q. Will you examine your letter file and see if you can find a letter with which you transmitted the rough adjustment to the owners and the letter from the owners which accompanied [490] the return of the adjustment?

A. Here is a letter dated, April 19th, 1913.

Q. Let me see it? A. Yes, sir (handing).

Mr. CAMPBELL.—I should like to offer that letter in evidence. With Mr. Clise's consent I will ask that the Reporter make a copy of the letter and substitute that for the original so that Johnson & Higgins may retain their files intact.

Mr. CLISE.—Yes, I have no objection to that.

(The letter is marked Respondent's Exhibit 3 and is as follows:)

“THE GLOBE NAVIGATION COMPANY,
“215-16 Globe Building,
“Seattle, Washington.

“April 19th, 1913.

“Messrs. Johnson & Higgins,
“San Francisco, California.

“Dear Sirs:

“We beg to acknowledge receipt of your advice of the 14th instant, also under separate cover, we received rough copy of adjustment ‘William Nottingham’ disaster October, 1911.

“We have made a careful examination of the adjustment, having gone into it with your Seattle firm, have also discussed it with Mr. H. R. Clise and

(Deposition of John A. Bishop.)

we are today returning it via registered mail.

“Some items charged against owners we do not fully understand, viz: United States Marshal's bill for \$354.15—\$45.10 of which is charged to owners.

We are unaware of any reason for charge. The charge of \$38.00 made against owners account Mr. H. R. Clise's trip to San Francisco on November [491] 18th, 1911, is not clear to the writer. The charges including Committee Fee, statement Master, Average bonds, telegrams, Adjuster's fee collecting commission seem to the writer to be high, especially as you seem to have made a charge of \$250.00 against owners for consultations and advice. We fail to remember such charges when our business was more important and when we had more frequent cases. However, we approve the adjustment and will be obliged if you will mail us fair copy at your early convenience, assuming, of course, if after our having called your attention to above items, you will change them if a change can be made.

“Yours very truly,

“THE GLOBE NAVIGATION COMPANY,

“By G. F. THORNDYKE,

“Manager.”

Mr. CAMPBELL.—Q. I notice in the letter, Mr. Bishop, some question is made by the writer as to certain items which you have charged. Will you look at the letter so as to acquaint yourself with its contents? A. Yes, sir.

Q. Have you looked it over? A. Yes, sir I have.

Q. Was the adjustment changed by you as ad-

(Deposition of John A. Bishop.)

juster to conform to the criticism in the letter?

A. No, sir.

Q. Are you familiar with the policies of the Fireman's Fund Insurance Company covering on the "Nottingham"?

A. I think I have seen them, yes.

Q. I hand you a copy of the policy; are you familiar with the San Francisco form of hull time policy?

A. Yes, sir, I am.

Q. The San Francisco form of such policy which is used by the [492] Fireman's Fund Insurance Company? A. Yes, sir.

Q. Did you make demand on the Fireman's Fund Insurance Company for payment of its share of the general average? A. Yes, sir, we did.

Q. Under what clause or clauses of the policies did you make your demand on behalf of the owners on the Fireman's Fund Insurance Company for payment by that company of that proportion of the general average which has been charged against the underwriters on the vessel?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial.

A. The policy covers general average and salvage charges.

Mr. CAMPBELL.—Q. Will you point out the clause under which you made that demand?

A. There is a clause on the margin which states that the policy is intended to cover general average and salvage charges.

(Deposition of John A. Bishop.)

Q. Are there any expenditures in connection with the salvage of which you have knowledge, which were not charged to general average?

A. No, sir, nothing that I know of.

Q. There were a series of items testified to by Mr. Thorndyke on the hearing before the United States Commissioner at Seattle to which I call your attention and ask you whether or not those items were ever presented to you for your consideration as the adjuster, and whether or not, if not included in the statement as prepared by you, they are items which should go into the general average. The first item was \$163.70 and was testified to have been the expenses of Mr. Thorndyke on a trip to San Francisco to consult with Mr. La Boyteaux and the Fireman's Fund Insurance Company in connection with the "Nottingham"? [493]

Mr. CLISE.—I object to the witness testifying in regard to this item of expenditure mentioned was never submitted to them and also I object to the witness stating his conclusions if the item was presented to him on the ground that the same was incompetent, irrelevant and immaterial, and that it would call for the conclusion of the witness either in a matter not before him, or in any event.

A. \$163.70, I don't think that bill was ever submitted to us. I don't see it entered in this rough adjustment and if it had been submitted it would have been entered there and dealt with.

Q. Would it have been charged to general average, or not?

(Deposition of John A. Bishop.)

A. That would depend upon the nature of the interview. I do not know what took place.

Q. Did you charge to general average any of the expenditures reported to you for trips of either Mr. Clise or Mr. Thorndyke to San Francisco?

Mr. CLISE.—I object to the witness testifying on mere conjecture, what he might do if the matter had been presented to him. The witness has testified that this item was not presented to him and I object to the witness giving mere guess opinions.

Mr. CAMPBELL.—The record, of course, shows that the witness is an expert employed by the libellant.

Mr. CLISE.—The witness must bear in mind that he would pass upon the item when the same was presented to him and he cannot prejudge a claim that might be presented in the regular course.

A. I think you asked the question whether we had allowed any of Mr. Thorndyke's charges to San Francisco? [494]

Mr. CAMPBELL.—Q. Yes, in general average?

A. I think there is only one bill that was submitted to us for Mr. Thorndyke's expenses to San Francisco and a portion of that particular bill was allowed.

Q. How much was it for? A. \$107.00.

Q. What was the date of it?

A. November 12th to 18th.

Q. The next item is an expense of Mr. Thorndyke to Portland on May 4th, 5th and 6th, from which the testimony shows to have been made for a con-

(Deposition of John A. Bishop.)

ference and survey in Portland, bearing those dates, between Captain Crowe, Mr. Walker, Captain Gibbs and Mr. Page, for the purpose of reaching a settlement of the question of the Fireman's Fund Insurance Company under its policies for a total loss.

Mr. CLISE.—The same objection as to the question in regard to the other item.

Mr. CAMPBELL.—Q. Was that bill submitted to you for consideration? A. I do not think so.

Q. If it had been would you have allowed it in general average?

Mr. CLISE.—I object for the same reason stated when a like question was asked, because the witness cannot prejudge a claim that has never been presented to him.

A. All I can reply is that no expenses have been allowed in this adjustment after February the 15th, when the interests were separated.

Mr. CAMPBELL.—Q. Would you allow in general average any expenses incurred by either the owners of the vessel or the underwriters of the vessel, in making an effort to adjust the question as between themselves, as to whether or not there was a liability under these policies for a total [495] loss?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness on a matter not before him.

A. I should say that would be a question where the cargo was not concerned.

Mr. CAMPBELL.—Q. Would you or would you

(Deposition of John A. Bishop.)

not allow it in general average?

Mr. CLISE.—The same objection.

A. I would not allow it in general average.

Mr. CAMPBELL.—Q. Can you advise me as to whether or not a bill for \$4.05 for coal oil used in maintaining a light on board the “Nottingham” while she was berthed at the Port of Portland’s dry-dock was ever presented to you?

Mr. CLISE.—The same objection as to the other items?

A. There were a number of items for riding lights while the vessel was in Astoria Harbor. I don’t think so.

Mr. CAMPBELL.—Q. If it was incurred after separation of interests would it have been allowed?

A. If it was incurred after February the 15th, it would not have been allowed.

Q. Was a bill for \$32.50 for the wages of a watchman from June 18th to June 30th ever presented to you? A. I think not.

Q. Would the same principle apply to that as to the preceding item with reference to the separation of interests?

Mr. CLISE.—The same objection.

A. Yes, sir.

Mr. CAMPBELL.—Q. Was a bill for \$16.60 for cleaning out the cabin between June 18th and June 30th ever presented to [496] you?

Mr. CLISE.—The same objection.

A. I think not.

Mr. CAMPBELL.—Q. The same principle would

(Deposition of John A. Bishop.)

apply based on the separation of interests?

Mr. CLISE.—The same objection.

A. My impression is there was no general average damage to this vessel; unless it arose from some general average damage, it would not be allowed.

Q. Was any general average damage allowed to the vessel in the adjustment?

A. No, sir, we have no record.

(A recess is here taken until 2 P. M.) [497]

AFTERNOON SESSION.

JOHN A. BISHOP, direct examination resumed.

Mr. CAMPBELL.—Q. Mr. Bishop, in making up an adjustment as a partial loss for labor and materials under the policies covering on the "Nottingham," on what repairs would you deduct one-third new for old?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial and it calls for the conclusion of the witness in a matter which is for the consideration of the Court.

A. Under this particular policy or any—

Mr. CAMPBELL.—Q. Under the particular policies covering on the "Nottingham"?

A. Would you repeat your question?

(The Reporter reads the question.)

A. Deduct from all repairs except from caulking and painting.

Q. Under what provision of the policy would you make that deduction?

Mr. CLISE.—The same objection.

A. Under the eighth paragraph.

(Deposition of John A. Bishop.)

Mr. CAMPBELL.—Q. Will you read all the provisions of the policy under which you make that deduction?

A. “It is agreed that one-third shall be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured against (except on Anchors, Copper and calking under the Copper), as a commutation for the average difference between new and old; the remains of all articles replaced being considered as salvage, and their proceeds deducted from the gross loss.”

Q. Wherein, in that provision in that clause, is there anything which would make you not deduct one-third from caulking? [498]

Mr. CLISE.—The same objection.

A. Because it goes on to read: “And it is especially agreed that, instead of deducting one-third for new on the expense of re-metalling, including docking and calking, there shall be deducted two and one-half per cent of the cost of re-metalling, docking and calking, after deducting the value of the old metal and nails, for each and every month the metal shall have been on the vessel at the time when it is taken off; and if it shall have been on forty months or more, the cost shall be wholly borne by the insured.”

Mr. CAMPBELL.—Q. In lieu of deducting one-third off from the caulking, how would you treat the caulking under an adjustment of that character?

Mr. CLISE.—The same objection.

A. We would charge to the owners $2\frac{1}{2}$ per cent

(Deposition of John A. Bishop.)

of the cost of caulking for every month that the vessel had been caulked, from the date of the previous caulking.

Mr. CAMPBELL.—Q. Where do you find the provision which covers painting?

Mr. CLISE.—The same objection.

A. There is a continuation of this eighth paragraph: "In case the vessel shall be on a single bottom, the same rule shall apply to docking and caulking, but one-twelfth to be deducted from the cost of painting for every month the paint shall have been on the bottom, and when the same shall not have been repainted for twelve months, the whole cost to be borne by the insured."

Mr. CAMPBELL.—Q. Would you or would you not make a deduction on anchors, copper and caulking under the copper?

Mr. CLISE.—I object to the question for the same reason [499] heretofore given, because it is leading and suggestive.

A. The policy provides—

Mr. CAMPBELL.—Q. (Intg.) In what manner would you treat the anchors, copper and caulking under the copper with reference to deduction?

Mr. CLISE.—The same objection.

A. The anchors are allowed net with the exception of the wooden stock and the caulking, under the copper, we deduct two and one-half per cent for each month from the time the vessel was last caulked.

Mr. CAMPBELL.—Q. In what manner would you

(Deposition of John A. Bishop.)

treat nautical instruments with respect to deduction, or not?

Mr. CLISE.—The same objection.

A. One-third off; a deduction of one-third.

Mr. CAMPBELL.—Q. How would you treat all metal articles except anchors and copper?

Mr. CLISE.—The same objection.

A. A deduction of one-third.

Mr. CAMPBELL.—Q. What can you say as to whether or not the making of such adjustment, as you have testified to, is or is not in accordance with the settled practice on the Pacific Coast under this character or policy?

Mr. CLISE.—Objected to as incompetent, irrelevant and immaterial.

A. That method is the usual practice in adjusting losses under this particular form of policy. In regard to your previous question, I might say that there is no deduction of one-third off stores, like provisions and things of those kind, that are taken aboard; they are allowed net. [500]

Cross-examination.

Mr. CLISE.—Q. Mr. Bishop, I understand that the adjustment which you have made up covers a period commencing from the time the vessel reached Astoria up until there was a segregation of interest at St. Johns after the 8th of February; is that correct? A. Up to the 15th of February.

Q. Up to the 15th of February? A. Yes.

Q. And you do not include in the adjustment anything that occurred after that date, or anything that

(Deposition of John A. Bishop.)

occurred prior to the arrival of the vessel at Astoria?

A. The adjustment, in fact, covers from the time the vessel bore away for the port of refuge, but the crew had been taken off, therefore there is no allowance made for the crew's wages; if the crew had remained upon the vessel, there would have been an allowance for the crew's wages.

Q. For what time. I mean if the crew had remained on the vessel?

A. The charter was made under the York Antwerp rules, therefore, the wages would not have started until her arrival at Astoria.

Q. Irrespective whether the crew were on board or not?

A. If there was no crew on board, of course, there is no allowance for wages.

Q. Not from the time of the abandonment up until she arrived at Astoria?

A. There would only be an allowance for such members of the crew standing up to safe-guard the interests, which, in this case, was the captain.

Q. Now, in making up this adjustment, you relied upon the information that is furnished you by the owners?

A. And the documents which are supplied by the owners.

Q. Is it a frequent occurrence that items are omitted, say, [501] unintentionally by the owners?

A. We frequently ask owners for items which they

(Deposition of John A. Bishop.)

have omitted wherever we suspect that there has been an item omitted.

Q. That is no uncommon occurrence?

A. That is no uncommon occurrence.

Q. Then, you make the adjustment upon the information and documents as furnished to you?

A. Yes, sir.

Q. You testified that you requested the Globe Navigation Company for all bills and documents in reference to that. Now, that request was frequently made through your Seattle office, was it not? It was not always made direct to the Globe Navigation Company?

A. I think this case was handled direct between the San Francisco office and the Globe Navigation Company. I do not think anything was requested through the Seattle office.

Q. You think, then, that this did not pass through Mr. Becket's hands in any way?

A. I do not think so; I do not remember anything that passed through his hands.

Q. In the bills and charges furnished you by the Globe Navigation Company, you rejected a good many of them?

A. There were quite a number of items we charged to the owners' column, yes.

Q. You did that simply upon your own motion as an adjuster? A. Yes, sir.

Q. Now, there is Frank Walker's bill there for \$750.00 and you only allowed \$150.00. You did that simply because you considered \$150.00 as the only

(Deposition of John A. Bishop.)

charge to be allowed in general average?

A. Yes, sir; that is correct.

Q. You knew nothing about whether or not Mr. Walker was making these surveys in connection with other claims and [502] charges made under the policy, or not?

A. There were a number of dates here where surveys are made included in Mr. Walker's bills. The dates run from October to December and then again in May, 1912, which would lead us to suppose that there were surveys outside of the general average surveys and they must have been in connection with the damage to the vessel.

Q. So that you were not passing upon the question as to whether or not they were a just charge to be made under other provisions of the policy except the general average clause?

A. It is strictly general average.

Q. Anything you have to say is not to be taken to prejudice anything other than the general average claim?

A. This adjustment deals entirely with general average.

Q. In that dockage charge, you only allow \$20.00 and disallow \$79.34. There is an item there, as I understand, of \$99.34?

A. The \$20.00 is for the wharfage charge in December, ten days at \$2.00; we allowed that in general average. It was after the discharge of the cargo, but it was prior to the abandonment of the voyage.

Q. When is the charge of \$79.34—that is before

(Deposition of John A. Bishop.)

or after the segregation of interests?

A. No, sir, that is drydockage in December.

Q. Why do you disallow that?

A. Because it is entirely in connection with repairs which are of a particular average nature. Any damage to the vessel's bottom was particular average.

Q. Then, you think it was not necessary to dock the vessel in order to determine whether or not the vessel could be abandoned?

A. No, sir, I understand the dockage was [503] entirely in connections with repairs.

Q. Where do you get that understanding?

A. Even assuming that there were repairs of a particular average nature, the docking for examination of the damage to the bottom would not be general average.

Q. You do not take testimony in making up this adjustment?

A. We have the surveys before us, of course, and all the documents. The general average surveys ceases upon the recommendation of the surveyors to discharge the cargo. It is the first survey in the port of refuge which is allowed in general average which is in the interest of both ship and cargo.

Q. Had the surveyors recommended that the voyage be abandoned prior to this dockage?

A. I do not know when there was a recommendation to abandon the voyage.

Q. How can you determine this was a proper charge?

A. The only part of Mr. Walker's charges, which

(Deposition of John A. Bishop.)

are allowed in general average, are dealing with ship and cargo, that is, his recommendation to discharge the cargo for the purpose of repairs.

Q. But the cargo was on board at this time in December and if Mr. Walker had not completed his survey and had made no recommendation and it was necessary for him to have the vessel docked to complete his survey, why should not that go in as general average?

A. The cargo was discharged on December 21st, when the vessel went into the drydock.

Q. You mean prior to her going into the drydock?

A. She went up the river on November 29th, when the cargo was discharged. [504]

Q. Then, explain, Mr. Bishop, how you apportion \$150.00 to general average out of Mr. Walker's bill for \$750.00 and \$600.00 to owners?

A. That is a preliminary survey to determine whether or not the vessel was in fit condition to proceed on her voyage, or whether it was necessary for her to discharge the cargo and make repairs. The question of abandonment did not come up until much later.

Mr. CAMPBELL.—Q. That is abandonment of the voyage? A. Yes, sir.

Mr. CLISE.—Q. You do not allow him, then, anything for the services he rendered to determine whether or not the voyage could be abandoned?

A. No, sir.

Q. If it was necessary for Mr. Walker to make additional surveys to determine whether or not the

(Deposition of John A. Bishop.)

voyage could be abandoned, would not that be a proper charge for general average in determining what the liability of the ship and the cargo was?

A. No, sir, I do not see how it could be. The surveyor recommends the discharge of the cargo. The cargo is then placed on the wharf and is in the position of safety. Then the vessel is surveyed and the damage determined.

Q. Then the only allowance you make for Mr. Walker is the services he rendered at Astoria?

A. Yes, sir, at Astoria, the preliminary survey.

Q. Referring to this bill of \$556.05 of the master's, of that bill, how much did you allow as against general average and how much did you charge against owners? A. \$213.50.

Q. You allowed in general average?

A. Yes, sir, we allowed to general average. [505]

Q. And the balance you charged fully to the owners?

A. And the balance we charged fully to the owners.

Q. And the items are what you testified to in your direct examination? A. Yes, sir.

Q. When it came to the first mate, did you eliminate all of the first mate's expenses as well as any charge for services?

A. Yes, sir, we did not allow any of the first mate's charges.

Q. For expenses at all?

A. We did not allow any of his expenses or his wages.

(Deposition of John A. Bishop.)

Q. Why was that?

A. The master was acting—we allowed the master's on account that he was there as agent, that it was necessary for the owners to have someone there and the master acted as agent in the port of refuge.

Q. Have owners no discretion in matters of that kind as to whether or not to retain just one man or two men?

A. I do not know why the mate was there at all. You see the cargo had—the vessel had been abandoned, the crew were paid off, so that he was not standing there as a member of the crew, and it was necessary, of course, for the owners to have somebody there and we allowed the master's wages.

Q. But if the owners in the exercise of what they deem to be a wise discretion or they had a valuable ship and a valuable cargo, and deemed it necessary that not only they should retain the captain, but the first mate, are they allowed no discretion whatsoever in matters of that kind, where a vessel is in a port of refuge as this vessel was?

A. Well, it would depend, of course, upon the situation of the case. In this particular case, there were watchmen on the vessel, which were not necessary to have the mate and [506] master to watch the vessel, when the watchmen were already on. We were merely allowing the master as the agent.

Q. Then the discretion of the adjusters is to supersede the discretion of the owner in such cases, is it?

A. To a certain extent I suppose it does. We did

(Deposition of John A. Bishop.)

not see how the cargo was concerned in Mr. Brown; we do not know what Mr. Brown was there for at all. He did not seem to be there in connection with the cargo, because the master was doing everything in connection with that.

Q. But if the mate was there, say, at the wish of either the master or the owners, then should not a reasonable allowance be made, not only for his expenses but for his services?

A. Only if he is acting in a joint capacity in the interest of the cargo and the vessel.

Q. If he was?

A. If he was acting in that capacity, yes.

Q. What is the total disallowance made by you in making up this adjustment from the claims advanced by owners?

A. \$3,244.58, that includes that portion of our fee which we charged to the owners.

Q. There is no allowance made for pay-roll included therein?

A. No allowance for pay-roll. There is an item here for pay-roll, but it is the pay-roll which was charged to the owners, because it was only up to October 14th and there were no wages allowed in the case at all.

Q. Now, frequently, you take and make a division between owners and underwriters one-half. How do you make that kind of a division?

Mr. CAMPBELL.—What division do you refer to? [507]

Mr. CLISE.—Q. Of this item contained therein?

(Deposition of John A. Bishop.)

A. That depends, of course, on the circumstances of each particular case.

Q. But if we assumed that the vessel is valued at \$45,000.00 and the insurance is \$30,000.00, why would not a division of the basis be two-thirds and one-third?

A. This adjustment is entirely apart from the question of any insurance. The question of insurance does not come in in the division of any of these charges. It is only after the ship's proportion of the general average has been ascertained, that the question of insurance arises.

Q. But the adjustment must be based on the insurance policy?

A. No, sir, the adjustment is an adjustment of general average between the ship owner and the cargo owner; if the ship owner was uninsured, the adjustment of general average would be exactly the same.

Q. I understood you to testify this morning that the sum of \$5637.46 was the amount charged in the general average adjustment as against the hull?

A. That is the hull's proportion in general average.

Q. Now, you spoke of having allowed credits, that was the sum of \$3539.38 as the charge against the underwriters?

A. In the statetment there is an allowance for disbursing commission and interest on disbursements which is figured on the entire disbursements. Now, the underwriters having advanced a portion of that

(Deposition of John A. Bishop.)

money, received credit for their proportion of their cost and disbursement.

Q. Now, as I understand, you testified before they had \$1900.00? A. \$1990.00. [508]

Q. You add the interest and \$1990.00, that makes up the total to make the difference between \$5637.46 and \$3539.38?

A. No, sir, the \$5637.46 is the ship's proportion of general average. The amount due under the Fireman's Fund policy was \$3758.31; that is, I think, 30/45ths of the \$5637.46. The Fireman's Fund had paid towards those disbursements \$1990.29. We credited them with the \$1990.29 and also with the proportion of the collecting commission and the interest applying to that \$1990.29, making a total credit of \$2209.22; that left a balance of \$1549.09.

Q. Mr. Bishop, I understand you to make the unqualified statement, that in an adjustment of particular average, that one-third new for old would be deducted on account of all labor and materials, save and except caulking and painting and that you afterwards modified that by eliminating therefrom provisions? A. And anchors.

Q. And that you make no other exception, whatsoever. Is that correct?

A. Yes, sir, that is correct under a San Francisco form of policy. That does not include, of course, the cost of proving the claim like a survey fee or protest.

Redirect Examination.

Mr. CAMPBELL.—Q. Was any notice of omitted

(Deposition of John A. Bishop.)

items in the adjustment ever given to you by the owners?

A. No, sir, not that I am aware of. No, I think not.

Q. Were any items of omission or matters of criticism called to your attention, other than such as are implied in the letter offered in evidence this morning, Respondent's Exhibit 3? A. No, sir.

Q. I did not understand, Mr. Bishop, just what you said [509] about allowance of wages from the time of abandonment of vessel until her arrival at Astoria.

A. When I made that remark, Mr. Campbell, I had overlooked the fact that she had York Antwerp rules in the charter-party. Had there been no York Antwerp rules and had the crew been on board, the general average would commence at the time of deviating, coming into Astoria.

Q. Under the York Antwerp rules provided for in the charter party, would there have been any allowance for wages from the time that the vessel was in distress until she arrived at Astoria, even though the crew had stood by her? A. No, sir.

Q. Mr. Bishop, what was the reason for your not allowing in general average the wages of the mate from November 9th to February 12th?

A. The vessel having been abandoned, the crew paid off, he was not exactly a regular member of the crew, therefore, there was no allowance for crew's wages, but we allowed the master's wages merely as an agent looking after the joint interests until the

(Deposition of John A. Bishop.)

cargo was taken off and disposed of.

Q. Under the settled practice on this coast, allowance for how many agents in the port of refuge are customarily made?

A. We only allow one agent.

Q. Would the docking of the vessel for examination made for the purpose of making repairs or for the purpose of ascertaining whether the voyage should be abandoned, in any event be charged to general average?

A. It is a question that calls for a great deal of consideration. The practice is, when a vessel puts into a port of refuge for repairs, the first surveys are allowed in general average. That is merely to [510] determine whether or not the vessel is in condition to proceed on her voyage and whether it is necessary to discharge cargo. After that, the surveys in connection with all repairs are chargeable to the particular average, or if there was particular and general average repairs, then they would be apportioned between the two repairs. If the vessel proceeds on her voyage, the final certificate of the survey is also general average.

Q. I will ask you to examine this copy of the adjustment, which I have, and state whether or not it is a true and correct copy of the adjustment prepared by you. A. It is.

Q. Is it one of the copies which was issued by your office? A. It was issued by our office.

Q. Does it bear the signature of your firm?

A. It does.

(Deposition of John A. Bishop.)

Q. That is the adjustment with respect to which you have been testifying this morning?

A. It is.

Mr. CAMPBELL.—I offer that in evidence and ask that it be marked Respondent's Exhibit 4.

(The adjustment is marked Respondent's Exhibit 4.) [511]

Thursday, November 13th, 1913.

[**Deposition of George F. Thorndyke, for Libelant.**]

GEORGE F. THORNDYKE, called for the libelant, sworn.

Mr. CLISE.—Q. Mr. Thorndyke, on page 13 of your testimony taken before A. C. Bowman, United States Commissioner at Seattle, in this case you give a list of items going to make up the sum total referred to in paragraph 10 in libelant's complaint. I want to call your attention to a charge of \$56.70 and ask you to explain the occasion for that charge being made?

A. The occasion for the making of that charge was the sending of you, or the payment of your fare, from Seattle to San Francisco and return for the purpose of consultation with the adjusters and underwriters in San Francisco.

Q. Did you accompany me on that trip?

A. I did.

Q. What were your expenses on that trip?

A. \$107.00.

Q. How did you and myself happen to make that trip? Where was the "Nottingham" when this trip was made?

(Deposition of George F. Thorndyke.)

A. She was at Astoria, Oregon.

Q. Had there been any adjustment of the differences between yourself and the underwriters at that time?

A. I would not say that there had been any differences. We had matters that we wanted to take up with the underwriters for settlement and the principal underwriters were in San Francisco, and as a result of several talks with Mr. Taylor on the matter, he decided that we should go to San Francisco to the head office of the Fireman's Fund Insurance Company.

Q. At that time was not the "Nottingham" at Astoria and had you not given a notice of abandonment to the underwriters? [512] Had not the underwriters refused to accept an abandonment and refused to accept and take over the vessel, and do you not recall that difference? Were you and the underwriters in perfect accord as to what disposition was to be made with the "Nottingham"?

A. No, sir, we were diametrically opposed.

Q. Was or was not this trip to San Francisco for the purpose of adjusting the difference between the owners and the underwriters as to what disposition should be made of the "Nottingham" and her cargo and some conclusion arrived at as to what should be done with the schooner and her cargo?

A. Yes, sir.

Q. After the salvage difficulties were adjusted in February, 1912, did you make another trip to San Francisco accompanied by myself?

(Deposition of George F. Thorndyke.)

A. Yes, sir.

Q. How did you come to make that trip?

A. That trip was made as a result of an agreement in San Francisco with Mr. Levison of the Fireman's Fund Insurance Company, on the previous trip in November.

Q. What was the understanding or agreement that you refer to?

A. The agreement was, that on the first trip in November, that owing to the total unsettled condition of the affairs of the "Nottingham," that the underwriters did not care to take up anything in connection with her, and as spokesman for them Mr. Levison stated to us that he thought we should go back, that you and I should go back up north and proceed to have the vessel released from her libel and arrangements made to discharge the cargo, and dock the vessel and determine her damages and then return to [513] San Francisco for the purpose of a settlement.

Q. And do I understand that was the occasion for *occurring* the expenses of yourself and my coming to San Francisco at that time?

A. Entirely so.

Cross-examination.

Mr. CAMPBELL.—Q. Referring, Mr. Thorndyke, to the voucher for the \$56.70 and the \$107.00, which were for transportation and expenses of the trip of yourself and Mr. Clise to San Francisco in November, 1911, to discuss the situation which had resulted from the trouble to the "Nottingham" with

(Deposition of George F. Thorndyke.)

the adjusters, I do not understand you to say that Mr. Taylor directed you to come to San Francisco. He may have suggested it, but did he direct you to come to San Francisco?

A. No, sir, he did not direct us to come to San Francisco, but he implied that we should go to San Francisco if we wanted to get an adjustment and settlement of these affairs with the underwriters.

Q. At that time and at all times thereafter, the Fireman's Fund Insurance Company was denying any liability under its policies on the "Nottingham" for a total loss, for a claim of a total loss, was it not?

A. They refused to accept the abandonment which we gave them.

Q. And at all times adhered to that refusal, did they not?

A. Yes, sir, except that they discussed the case with us. They did not refuse to discuss the case.

Q. Grant that. There was a continued discussion between you over the case, and at no time did the Fireman's Fund Insurance Company recede from their refusal to accept a [514] notice of abandonment and their denial of any liability under their policies? A. No, sir.

Q. When you came down to San Francisco, both on your February trip and on your November trip, this dispute still existed, did it not? A. Yes, sir.

Q. And has ever since existed to the present time?

A. Yes, sir.

Q. When you said that Mr. Levison acted as

(Deposition of George F. Thorndyke.)

spokesman for the underwriters, what underwriters were you referring to, all of the underwriters who were interested in the venture; so to speak, underwriters on the cargo as well as those on the hull?

A. All the underwriters that he spoke of in his office at that time. He stated that the underwriters on the "Nottingham," and he spoke as if he meant other underwriters on the "Nottingham," or the people who had insured, taken part of the risk from the Firemen's Fund Insurance Company had assumed a position where they did not care to take any interest in the "Nottingham" matters at that stage of the proceedings.

Q. He did not ask you to come back to San Francisco again to discuss the settlement of the insurance companies liability under the policies, did he?

A. He implied it just that way, you will have to get the matters, that I testified to, straightened and then you will have to come back to San Francisco and try to reach a settlement.

Q. Are you sure that he ever told you that?

A. Yes, sir.

Q. Did you understand that to be an abandonment on the part of the insurance company of its refusal to accept your notice of abandonment?

A. No, sir, I did not. We knew that it was [515] a dispute and we were in hopes to reach some ground where we could settle the matter. Arbitration had been discussed and as a result of numerous interviews, he made this suggestion about as I have given it to you.

(Deposition of George F. Thorndyke.)

Q. Boiled down, both of these trips, the November trip and the February trip, were made for the purpose of you yourself and by Mr. Clise representing the Globe Navigation Company, endeavoring to reach a settlement with the underwriters of the question of liability or no liability under the policies?

A. Yes, sir.

Mr. CAMPBELL.—I think that is all.

Redirect Examination.

Mr. CLISE.—Q. At whose initiative were these trips taken; were they initiated by yourself or myself or by the Firemen's Fund Insurance Company or its representatives?

A. Well, I asked Mr. Taylor this question: Would any of the underwriters come here, would any of the representative underwriters of the San Francisco Firemen's Fund come to Seattle. He says, no, you will have to go to San Francisco to see them, none of them will come here; you had better go down to San Francisco.

Mr. CAMPBELL.—Q. That is, you had better go down to San Francisco if you wanted to negotiate with the officers of the company?

A. Yes, sir, if we wanted to negotiate with the officers of the company.

Mr. CLISE.—Q. How long have you been acting as the manager of the vessels owned by the Globe Navigation Company? A. Six years.

Q. Prior to that time were you in the employ of the company? [516]

A. Traffic manager and had nominally charge of

(Deposition of George F. Thorndyke.)

the operation of the vessels.

Q. How many vessels did the company own in the first place? A. Eight.

Q. What were they, schooners or steamers?

A. Three steamers and five schooners.

Q. Did you have the charge of the purchase of supplies for these vessels during this time?

A. Always.

Q. How many vessels does the company operate now? A. Five.

Q. What are they?

A. All wooden sail vessels.

Q. Are you familiar with the price of stores and supplies in Seattle in October, 1911? A. Yes, sir.

Q. During that time, were you purchasing supplies for these vessels in the Seattle market?

A. I was.

Q. Will you examine Mr. Walker's specifications and particularly with regard to the subsistence stores and state what was the fair value of the articles enumerated therein at the time tenders were asked for the repairs to the "Nottingham"?

A. \$1070.39.

Q. Now, referring to the chandlery stores, what was the fair market value at the same time and place for those stores? A. \$629.07.

Q. To the slop chest? A. \$356.70.

Q. To the galley and cabin equipment?

A. \$313.98.

Q. To the deck equipment? A. \$1204.92.

Q. The carpenters tools and donkey-room tools?

(Deposition of George F. Thorndyke.)

A. \$49.43.

Q. Navigation instruments? A. \$151.21.

Q. Now, were you acquainted with the value of supplies similar to those contained in the various headings that I have given [517] you, at Portland, Oregon? A. Very similar, the prices are.

Q. Have your vessels frequently been fitted out on the Columbia river? A. Yes, sir.

Q. And you have, during this time, purchased supplies there, have you?

A. Yes, sir, we buy supplies at both places, Seattle and Portland, Oregon.

Mr. CAMPBELL.—We move to strike all this testimony out on the ground it is irrelevant and immaterial, for the reason that all the items and equipment testified to were included in the bid of Mr. Cornfoot of the Albina Engine Machine Works.

Mr. CLISE.—Q. Referring again to your testimony at Seattle, you were asked this question:

“Q. You have stated already that on receipt of this notification from Mr. Plummer, you notified the representative of the Firemen’s Fund here in Seattle on Saturday afternoon, October 14, 1911?

“A. Yes, I think Mr. Taylor and I exchanged telephones that afternoon.”

Now, referring to that conversation, about what time, on Saturday, was it that you got this information?

A. It was late in the afternoon, I should say about three o’clock.

Q. When you notified Mr. Taylor of the informa-

(Deposition of George F. Thorndyke.)

tion you had received from Mr. Plummer, what did you say to him?

A. Can I make a statement regarding that matter?

Q. Yes. A. Regarding the whole thing?

Q. Yes, go ahead. Answer the question in such way as you see fit.

A. When I first testified in this case in Seattle, I was one of the first witnesses,—if not the first [518] witness called. I had not gone very deep into the case, and had not given it as much thought as I had reason to give it since then, and I stated that I thought we exchanged telephones at that time, but since that time, in thinking the matter over, in my office—thinking it over in connection with the times the testimony was taken and during those periods, keeping the matter constantly in my mind, why, I am now prepared to state that I called Mr. Taylor up in the afternoon of Saturday, the 14th of October, and notified him that I had received a telephone message from Mr. Plummer of the Puget Sound Tugboat Company, where he said to me, “Thorndyke, did you hear about the ‘Nottingham,’ ” and I said, “no,” and he said, “the ‘Nottingham’ had been dismantled and water-logged and abandoned at sea and the crew were taken off the ‘Nottingham’ by the schooner ‘David Evans,’ ” that he had received a wireless message from a master of one of his tugs—I think it was Bailey on the “Tatoosh,” to that effect, and I also stated to Taylor, that the “Nottingham” has probably gone, it would be the last of her, and that I guessed now she belonged to the under-

(Deposition of George F. Thorndyke.)

writers, and in that way, informed him of our intention to abandon the vessel because she was lost, she was dismasted and water-logged, and had no crew aboard, and was lost on the ocean.

Q. Whenever thereafter you received any information about the "Nottingham," did you communicate the same to Mr. Taylor of the Firemen's Fund?

A. Yes, sir.

Q. Why did you do so?

A. Well, I may have communicated information that I had regarding similar news; I might have [519] told him of a telegram that we had. I would not state positively that I did, or not.

Mr. CLISE.—At this time, I want to give notice to counsel for respondent, that it is our intention to apply for leave to amend our libel alleging abandonment on the 14th of November, instead of at the time alleged in the libel already filed.

Mr. CAMPBELL.—I shall oppose any such amendment under the record established in this case by your own witnesses. [520]

Cross-examination.

Mr. CAMPBELL.—Q. You knew this case was going to be tried in Seattle, did you not?

A. Yes, sir.

Q. You knew that your deposition was to be taken? A. Yes, sir.

Q. You had been in frequent consultation with Mr. Clise in preparation for it?

A. No, sir, not very frequent.

Q. Had you not been in consultation with him?

(Deposition of George F. Thorndyke.)

A. Yes, sir.

Q. You went over the whole case with him?

A. No, sir.

Q. You did not? A. No, sir.

Q. How did he prepare his case for trial then?

A. I do not know. He got such information as he required from me, but we did not go over the whole case. He would ask me questions.

Q. When you were put on the stand before, you were given ample opportunity to testify about everything that you wanted to, were you not?

A. Yes, sir.

Q. You went over this question of abandonment at that time, did you not?

A. I did not go over the question of this abandonment that I spoke of.

Q. You were examined in respect to it, were you not? A. Yes, sir.

Q. And you testified as to a conversation that you had with Mr. Taylor on Saturday afternoon?

A. Yes, sir.

Q. And at that time, you had no recollection of the facts about which you testified here this morning?

A. Yes, sir.

Q. You did not think about them?

A. I have stated now, that since that time, these matters have come to my mind. [521]

Q. What came to your mind since that time?

A. Numerous and various things.

Q. Tell me what they are.

A. The contact of the case in this office; the contact

(Deposition of George F. Thorndyke.)
of the case in Seattle.

Q. What is it that has made appear to your mind the significance of any such statement that you now have made amending your former testimony?

A. I stated I have taken a recourse to my memory.

Q. Have you read over this testimony since that time? A. Yes, sir.

Q. Where did you read it?

A. I read it in Seattle.

Q. Where did you get it, from Mr. Clise?

A. Maybe from Mr. Clise, or maybe from Judge Bogle.

Q. Have you discussed this particular point with either one of them? A. Yes, sir.

Q. Which one?

A. I discussed it with Mr. Clise.

Q. Did you discuss it with Judge Bogle also?

A. Yes, sir.

Q. That particular point you happened to discuss between you and your attorneys? A. Yes, sir.

Q. And after that discussion, you remembered this fact that you testified to now?

A. I remembered it before.

Q. It was a discussion that drew your attention to it?

A. No, sir, my recollection was the first thing that prompted the discussion.

Q. What was there about the suggestion that caused your recollection to go back to that conversation that caused you to change your testimony?

A. I read my statement regarding my telephoning

(Deposition of George F. Thorndyke.)

to Mr. Taylor; I saw it was even there not completed; we had quite a talk; that indicated there [522] all that was said on the telephone.

Q. What did Judge Bogle say to you about the significance of any such testimony?

A. I do not know that he said anything particular.

Q. Tell me what Judge Bogle said to you?

A. I do not remember that Judge Bogle addressed any remarks to me directly as to that.

Q. You just testified that he did.

A. I said we discussed the matter in his office.

Q. What did he say about this matter?

A. Why, he said that that was important; he said I should testify about that; if it is a fact, I should testify; it belonged in the case, and I should testify about it.

Q. He said it was important, did he?

A. Yes, sir, important testimony.

Q. And you discussed it quite at length, did you not?

A. No, sir, I was there only a short time.

Q. Did you not discuss with Judge Bogle what bearing it might have on your theory in this case?

A. I think very likely.

Q. After you discussed it with Judge Bogle, you went down and talked it over with Mr. Clise?

A. Yes, sir, I talked it over with Mr. Clise.

Q. After you had talked it over with Judge Bogle, did you not?

A. I talked it over with Mr. Clise after I talked it over with Judge Bogle.

(Deposition of George F. Thorndyke.)

Q. It was because of the conversation you had with Judge Bogle that you went and talked with Mr. Clise? A. I think quite likely. [523]

Q. Prior to the institution of this suit, did you give Mr. Clise the information, which he had, regarding the loss of the "Nottingham"?

A. I don't know that I understand.

Q. Where did Mr. Clise get his information as to the circumstances surrounding the damage to the "Nottingham"?

A. It came out in the course of interviews and my stories of what I had done in the matter. There were some things that in my direct statement there, that I did not tell you that prompted me to tell these things.

Q. When did you receive the telegram from the captain of the "Nottingham" which is contained in your notice of abandonment?

A. The same evening, it was telephoned my residence the same evening.

Q. What do you mean by saying in your notice of abandonment, "you are hereby notified that we have just received that telegram from the master"?

A. (No answer.)

Q. I am asking you when you got this telegram. Was this notice written immediately after you got the telegram?

A. I think that notice came in Saturday evening.

Q. Who prepared this notice of abandonment?

Mr. CLISE.—I want to interrupt the witness. There is no use testifying to things that are manifestly untrue. The evidence is that it did not arrive

(Deposition of George F. Thorndyke.)

until Sunday, November the 15th. He could not have received a message.

Mr. CAMPBELL.—Q. Who prepared this notice of abandonment?

A. Charles K. Poe.

Q. When did he prepare it, on Monday?

A. No, sir. [524]

Q. When?

A. Before 11 o'clock on Sunday, or rather that notice was typewritten on Monday, but it was prepared—the statement and the facts were prepared in the rough in the library of his residence on Sunday morning, as soon as I could get out there.

Q. What time was it that this was prepared?

A. On Sunday morning, the day following that I got my information.

Q. When did you serve it on the Fireman's Fund Insurance Company?

A. In the forenoon of Monday.

Q. It was written on that day?

A. I think it was typewritten that day, after he got down in his office. There was not a stenographer in his home.

Q. You swore to the libel that was filed in this case, did you not? A. Yes, sir.

Q. And the facts therein stated were true according to your knowledge and belief?

A. And recollection at that time.

Q. Your recollection, at the time this suit was instituted, was clearer than it is at the present time as to the events?

(Deposition of George F. Thorndyke.)

A. Not in lots of details. Things come up better now since I have been in contact with the case.

Q. You remember a great deal better now about this case, two years after the event, than you did in May of 1912 following the disaster?

A. Yes, sir, certain features of it, of course.

Q. But in May, 1912, you were right in the midst of this controversy with the Fireman's Fund Insurance Company? A. Yes, sir

Q. During the first days of May, you were in consultation [525] or in conference with Mr. Page representing the Fireman's Fund Insurance Company accompanied by myself, Mr. Taylor, Mr. Clise, Judge Bogle, Mr. Walker, Captain Gibbs and Captain Crowe, were you not? A. Yes, sir.

Q. And this libel was sworn to on the 10th day of May? A. Yes, sir.

Q. You say that your recollection two years after the event is clearer than it was at that time?

A. Why, certainly I do, for some things. I have exhibited to you in other circumstances, things that I remember, details in this case that I remember when other circumstances directed them to my mind; things I never thought of until I concentrated my mind to it; it is a question of concentration.

Q. What time was it, in the afternoon of Saturday, that you telephoned Mr. Taylor?

A. I say something about three o'clock; it may have been after.

Q. At his office? A. Yes, sir.

Q. Is Mr. Taylor usually at his office on Saturday afternoons?

(Deposition of George F. Thorndyke.)

A. I do not know; he was there that afternoon.

Q. What was the conversation that you had with him?

A. I stated to him the telegram. I stated to him regarding the wireless that Plumber reported that he had received and I also stated that the "Nottingham" was apparently a goner, as I remember using the expression at that time; that she was lost.

Q. You thought that you would have a claim on the underwriters?

A. Yes, sir, I thought she was gone. I did not expect to hear from her again.

Q. That is the information that you gave him? [526]

A. That is about the information that I gave him.

Mr. CAMPBELL.—That is all.

Redirect Examination.

Mr. CLISE.—Q. When the disaster to the "Nottingham" occurred, do you recollect where I was?

A. You were away from Seattle; I think you were in San Francisco.

Q. Do you know who prepared and presented this libel in this case for you? A. I think you did.

Mr. CLISE.—That is all.

[Deposition of John A. Bishop, for Respondent
(Recalled).]

JOHN A. BISHOP, recalled.

Mr. CAMPBELL.—Q. Mr. Bishop, will you turn to your adjustment and tell me whether you have entered therein any of the following items: \$545.17 paid to the crew? A. Yes, sir.

(Deposition of John A. Bishop.)

Q. Have you entered a pay-roll of the crew?

A. We have.

Q. What is the sum of it?

A. \$545.17, the pay-roll of the crew to October 14th, 1911.

Q. Where did you charge that?

A. I charged it to the owners column.

Q. Have you an item of \$2.50 for Shipping Commissioner? A. Yes, sir.

Q. And to whom is that charged?

A. To the owners.

Q. Commission of \$5.70?

A. To George A. Nelson, charged to the owners.

Q. Have you got \$37.50 as railroad fare to Astoria?

A. For Mr. Thorndyke, that is charged to general average.

Q. You have such a charge as that, have you?

A. Yes, sir. [527]

Q. For railroad fare?

A. For personal expenses incident to trip from Seattle to Astoria and return, dated October 16, 17 and 18 in connection with "William Nottingham" disaster, October, 1911.

Q. Have you a further charge of \$33.20?

A. Yes, sir, personal expenses of Mr. Thorndyke to Portland, Oregon, and return, October 25th to 27th.

Q. Charged to? A. General average.

Q. An item of \$56.70?

A. Yes, sir, it is for one round trip ticket, Seattle

(Deposition of John A. Bishop.)

to San Francisco and return.

Q. Where was that charged?

A. To the owners' column.

Q. Can you locate two items for long distance telephones, \$2.30 and a telegram, \$11.15?

A. Long distance phone, Seattle, Taylor, \$1.65.

Q. No, it is an item of \$2.30 and one of \$11.15?

A. No, sir, I do not think it is here.

Q. Have you \$4.00 for noting protest?

A. Yes, sir.

Q. To V. Boelling? A. Yes, sir.

Q. Charged to general average? A. Yes, sir.

Q. Have you an item of \$15.20 for railroad fares?

A. Fares of H. R. Clise and G. F. Thorndyke from Seattle to Portland. That is charged to general average.

Q. Now, an item of \$107.00 for railroad fares?

A. That is for personal expenses for trip to San Francisco to consult adjusters and underwriters, November 12th to 18th.

Q. For Mr. Thorndyke? A. Yes, sir.

Q. Where is it charged? A. Owners' column.

Q. Have you an item of \$72.60?

A. For personal expenses of Mr. Thorndyke for three trips to Portland during November, [528] on account of interviews with Port Commission, contracts for towing and discharging "William Nottingham," \$72.60, charged to general average.

Q. 55.50? A. No, sir.

Q. Have you got an item of \$188.00 of Mr. Clise, for trip to San Francisco? A. No, sir.

(Deposition of John A. Bishop.)

Q. Have you got an item there of \$3.00 for telegrams? A. No, sir.

Q. Have you got an item of \$51.40 for Mr. Thorndyke's trip to Portland?

A. For personal expenses for two trips to Portland December, 1911. We allowed \$27.80 in general average.

Q. The balance to owners?

A. The balance to owners.

Q. \$4.00 marshal's fees is charged to general average? A. Yes, sir.

Q. Have you charged to general average \$4.00 for marshal's fees?

A. For railroad fare, Portland to Astoria, for the return of two keepers, \$4.00 charged to general average.

Q. Can you find in the adjustment an item of \$8.23 for telegrams in December and \$4.43 for telegrams and long distance calls in January?

A. The only item I have got is long distance calls for November, January and March, \$8.45, and telegrams from October to April, \$52.88.

Q. Have you got \$34.43 for expenses for trip of Mr. Thorndyke to Portland?

A. No, sir, nothing like \$34.43.

Q. Have you got an item for \$34.20?

A. Yes, sir, trip to Portland January 11th to 13th.

Q. Charged to owners? A. Charged to owners.

Q. What have you allowed Captain Swenson for personal expenses on account of himself and Mr.

(Deposition of John A. Bishop.)

Brown for November, December [529] and January?

A. There was a bill of \$556.05 and we have allowed to general average \$213.50.

Q. Did you allow any of Mr. Brown's expenses in general average?

A. No, sir. There is a further bill of Captain Swenson for \$945.83 for services from August 27th, 1911, to April 12th, 1912, which we have allowed \$500.00 to general average, charging \$445.83 to the owners. We have allowed in general average his wages from October the 15th to February 15th, 1912. [530]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, Francis Krull, United States Commissioner for the Northern District of California, do hereby certify that the reason stated for taking the foregoing depositions is that the testimony of the witnesses Wilfred Page, J. B. Levison, Charles R. Page, John A. Bishop and George F. Thorndyke is material and necessary in the cause in the caption of the said depositions named.

I further certify that on Tuesday, November 11th, Wednesday, November 12th and Thursday, November 13th, 1913, I was attended by H. R. Clise, Esq., proctor for the libellant, and Ira A. Campbell, Esq., proctor for the respondent, and by the witnesses who were of sound mind and lawful age, and that the witnesses were by me first duly cautioned and

sworn to testify the truth, the whole truth and nothing but the truth; that said depositions were, pursuant to the stipulation of the proctors for the respective parties hereto, taken in shorthand by Herbert Bennett, and afterwards reduced to typewriting; that the reading over and signing of said depositions of the witnesses was by the aforesaid stipulation expressly waived.

Accompanying said depositions and forming a part hereof and referred to and specified therein are "Respondent's Page Exhibit No. 1," "Respondent's Page Exhibit No. 2," "Respondent's Exhibit 3," and "Respondent's Exhibit 4," such exhibits are marked by me.

And I further certify that I have retained the [531] said depositions in my possession for the purpose of mailing the same with my own hand to the Clerk of the United States District Court for the Western District of Washington, Northern Division, the Court for which the same were taken.

And I do further certify that I am not of counsel nor attorney for any of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this — day December, 1913.

[Seal]

FRANCIS KRULL,

U. S. Commissioner, Northern District of California,
at San Francisco,

[Indorsed]: Reporter's Transcript. Depositions of Wilfred Page, J. B. Levison, Charles R. Page and John A. Bishop on behalf of Respondent, and George F. Thorndyke on behalf of Libelant, taken before Francis Krull, U. S. Commissioner at San Francisco, California. Filed in the U. S. District Court, Western District of Washington, Northern Division. Dec. 24, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [532]

[**Opinion.**]

*United States District Court, Western District of
Washington, Northern Division.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a
Corporation,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Defendant.

Filed April 14, 1915.

ACTION ON POLICY OF MARINE INSURANCE DECREE FOR PLAINTIFF.

H. R. CLISE, BOGLE, GRAVES, MERRITT & BOGLE, for Plaintiff.

McCUTCHEN, OLNEY & WILLARD, IRA A. CAMPBELL, BALLINGER, BATTLE, HULBERT & SHORTS, for Defendant.

NETERER, District Judge:

This is an action prosecuted by the plaintiff against the defendant to recover the sum of \$30,000.00 upon two policies of insurance issued upon the steamer "Wm. Nottingham," which, it is alleged, was lost by perils of the sea. To determine the issue, it is imperative that the conditions and specifications of the policy be understood. In the stipulations of the policy are the following provisions:

Specification 1. "No partial loss or particular average shall in any event be paid under this policy."

Specification 3. "Touching the adventures and perils which this insurance company is contented to bear, and takes upon itself in this Policy, they are of the seas * * * and all other losses and misfortunes that shall come to the hurt or damage of the vessel hereby insured, or any part thereof, to which the Insurers are liable by the rules and customs of insurance in San Francisco * * * and the provisions of the Civil Code of California, except such losses or misfortunes as are excluded by this policy."

Specification 5. "Not * * * to proceed to sea Grain laden, [533] except coastwise, without

a certificate from an inspector appointed by underwriters upon the hull or cargo, stating that the vessel is properly laden and fitted for her intended voyage."

Specification 7 contains the usual sue, labor and travel clause.

Specification 8. "It is agreed that one-third shall be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured against * * * as a commutation for the average difference of new and old * * * ."

Specification 9. "It is agreed that the insured shall not have the right to abandon the vessel unless the amount which this Company would be liable to pay under an adjustment, as of partial loss for labor and materials, (exclusive of salvage or general average expenses and the cost of funds) shall exceed half the amount hereby insured * * * ."

Upon the margin of the policy is endorsed the following:

"This insurance is against total and/or constructive total loss of vessel including general average and/or claims under three-fourths ($\frac{3}{4}$) running down clause."

Plaintiff in this case, bases its action upon constructive total loss. A constructive total loss is one which gives to a person the right to abandon, under Section 2717 of the Civil Code of California, which provides:

"A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof separately valued by

the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

1. If more than half thereof in value is actually lost, or would have *have* to be expended to recover it from the peril;

2. If it is injured to such an extent as to reduce its value more than one-half; * * * .”

Section 2721 of the same Code provides that abandonment is made by giving notice thereof to the insured, which may be done orally or in writing.
[534]

It is contended on the part of the defendant that the vessel was unseaworthy at the time it entered upon its voyage, and the implied warranty breached, and the policies avoided; that there was no total loss of the vessel within the terms of the policy and the law controlling the contract; that there was no constructive total loss, and contend that the marginal endorsement does not have operation over clauses 8 and 9 of the policy, and hence, under no manner of computation, could the loss be said to come within the provisions of law or the conditions of the policy.

I think that a reasonable construction of the policy must conclude that the endorsement of the policy must have operation. There was a purpose in the minds of the parties at the time the policy was issued, with relation to the conditions contained in this endorsement. It changes the stipulations in the body of the policy materially. They relate to a vital issue which must arise upon every loss under a policy, and all authorities agree that the marginal endorsement

must obtain over the written portion in the body of the contract, where they cannot be reconciled, and these having been entered by the party itself, must be construed most strongly against it.

The contention of the defendant that the vessel was unseaworthy and therefore the implied warranty was violated and the policy avoided, I think, is not well founded. Stipulation 5 in the policy might be construed as a stipulation with relation to the seaworthiness of the vessel, since it provides for a "certificate of fitness," in the event it carried certain commodities which are named, and that the implied warranty was thereby superseded by the express stipulation of the parties—*expressio unius est exclusio alterius*; but aside from this stipulation, the testimony, I think, is fairly conclusive that the vessel was seaworthy. She had just returned from a long voyage; she was in normal condition; she was laden and prior to [535] departure for the sea, was inspected and a certificate of seaworthiness issued. The vessel proceeded to sea on the 2d day of October, 1911. After entering upon the body of the ocean, she encountered a heavy storm which tore away one of the life-boats and flooded the donkey-room. On the morning of the 9th of October, the deck lashings parted and released the deck-load, which went overboard and carried with it the mainmast, the mizzenmast and the spanker-mast. The connections between the donkey-boiler and the water-tank were broken, and all fresh water was lost. A day or so later another heavy gale was encountered, accompanied by high seas. The vessel filled rapidly with

water. On the 13th it was water-logged and practically unmanageable. There was danger of her breaking up and being driven ashore. The officers and crew were compelled to leave and abandon the vessel for safety, and the vessel became a derelict. It was afterwards secured by a tug and brought to Astoria, Oregon, and the defendant, under the general average clause of the policy, contributed to certain expenses in caring for the vessel, and in its answer filed in this case, admitted liability, and did not at any time contend for unseaworthiness of the vessel until after the testimony was submitted in this case and amended answer filed. I think, under all of the circumstances, the contention of unseaworthiness cannot be sustained.

“Any forfeiture of a policy caused by a violation of its terms will be deemed waived by the insurer, if, after knowledge of the facts constituting such forfeiture, he treats the policy as obligatory.”

(Barber on Principles of Insurance, p. 96.)

The liability of the defendant, therefore, must be determined upon the question as to whether there was constructive total loss of the vessel. I think, under the evidence, that the master and crew were entirely justified in abandoning the vessel. No prudent man, as shown, would have continued with the vessel in her water-logged condition, and the voyage could not have been performed. [536]

A vessel may be abandoned,

“If the thing insured being a vessel, the contemplated voyage cannot be lawfully performed

without incurring a risk which a prudent man would not take under the circumstances."

(Civil Code of California, Section 2717.)

"The right of abandonment does not depend upon the certainty, but upon the high probability of the total loss either of the property or of the voyage, or both. The insured is to act not upon certainties, but upon the probabilities, and if the facts present a case of extreme hazard and the probable expense exceeding half of the value of the ship, the insured may abandon, though it should happen that she was afterwards recovered at a less expense."

(Royal Exchange Assurance Co. v. Graham & Morton Assurance Co., 166 Fed. 35.)

"The test usually employed in determining whether the loss is such as to permit the insured to abandon is to ascertain whether, under all of the circumstances attending the vessel, a prudent owner would have declined to repair, or in case of cargo whether it can be sent to its destination at a less expense than its value on arrival."

(29 Cyc. 692.)

"An absolute destruction is not necessary to recover the value of a policy," says the Supreme Court in *Great Western vs. Fogarty*, 86 U. S. 640.

In determining whether there is liability, the Court must determine whether the loss occasioned was more than one-half of the payment required under the policy. It is contended by the plaintiff that the boat was over-valued; that its real value was only \$30,000, or less, whereas the valuation was

placed at \$45,000, by the defendant, and that the estimate on right of abandonment value should be actual value. Whatever the actual value may have been, the parties are bound by their contract. The rate of insurance was based upon liability. The liability of the defendant is based upon valuation upon the vessel. The stated value fixed in the policy is conclusive.

“A valuation in a policy of marine insurance is conclusive between the parties thereto in an adjustment of either a partial or total loss.”

(California Code, Sec. 2736.)

In *Standard Marine Insurance Co. v. None Beach L. & T.* [537] Co., 133 Fed. 636, the Circuit Court of this Circuit, construing the provisions of the California Code applicable to this case, said:

“A valuation fixed in a policy is conclusive between the parties.”

In the “*Potomac*,” 105 U. S. 630, the Supreme Court of the United States, concerning valuations in a like policy, said:

“That valuation is conclusive in respect to all rights and obligations arising upon the policy of insurance.”

In view of what has been said, what is the loss and is the defendant liable upon this policy? The bids received for repair of the vessel range from \$20,059 to \$25,200. They are four in number. The average of all of the bids is \$23,455. The salvage adjustment amounts to \$5,399.46, making a total, based upon the average of the bids received for repair, of \$28,854. Under the marginal clause, the salvage

charges and general average are included. This would show a loss of more than one-half of the valuation of the vessel. Under the stipulations of the policy, one-third of the repairs is to be deducted for new and old. Taking the average of the bids submitted on repairs, deducting one-third for new and old, leaves \$15,636.67 amount of loss. Taking 30/45 of this, the amount to be paid by the defendant company, equals \$10,424.44, to which should be added salvage adjustment of \$5,399.46, making a total of \$15,823.90. This does not include other items which it is contended are properly chargeable under the general average clause. The question of abandonment is largely determined by the amount of loss. The vessel was actually abandoned by the master and crew. The plaintiff contends that the defendant was immediately, upon obtaining information of abandonment by master and crew, notified of the abandonment, by telephone, on Saturday night. This is denied by the defendant. That testimony is conclusive that on Monday morning a written abandonment was executed and [538] served upon the defendant. I think in view of the testimony in this case and the stipulations contained in the policy, together with the marginal endorsement, and the loss which was actually sustained, constructive abandonment was made. In *Victor Steamship Co. v. Western Assurance Co.*, 139 Pac. 808, the Supreme Court of California, in construing a provision of section 2705 of the California Civil Code which is applicable to this case, said:

“It is not necessary under this section that

there should be an actual abandonment. It is sufficient to make a constructive total loss if the right to abandon exists. * * * The existence of the right to abandon so as to make a constructive total loss is determined by the situation at the time of stranding. The question is whether at that time it would have been reasonably possible to bring the cargo into port without an expense of more than half of its value."

I think under all of the facts in this case, as disclosed by the evidence, the vessel having been actually abandoned and the steps taken by the plaintiff, that the Court should hold that there was an abandonment within the provisions of the law controlling this contract.

A. decree may be accordingly entered, for the plaintiff.

JEREMIAH NETERER,

Judge.

[Indorsed]: Opinion. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 14, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [539]

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

Decree.

This cause having come on for hearing, and it having been suggested to the Court that the libelant herein, The Globe Navigation Company, has been adjudged a bankrupt during the pendency of this action; now, by consent of both parties, S. P. Weston, who has been heretofore duly appointed trustee in bankruptcy of said The Globe Navigation Company, a bankrupt, is hereby substituted as libelant in lieu of the said The Globe Navigation Company;

And thereupon said cause coming on for final hearing upon the pleadings and proofs, and having been argued by the proctors for the respective parties, and due deliberation being had thereon, and the Court being of opinion that libelant is entitled to recover from the respondent the full amount of the two policies of insurance sued upon, with interest thereon at the rate of six per cent per annum from June 30th, 1913, and costs of suit; and counsel for libelant having admitted and stated in open court

that for a valuable consideration passed from respondent to libelant, that respondent is [540] entitled to a deduction from the amount which, in the opinion of the Court, libelant is entitled to recover from respondent of Eighty-five Hundred Dollars (\$8500.00);

And it appearing that said sum of Thirty Thousand Dollars ((\$30,000.00), together with interest thereon amounting to the sum of Thirty-two Hundred Sixty-five & 0/100 Dollars (\$3265.00) to date hereof, and respondent's costs and disbursements herein taxed and allowed in the sum of One Hundred Fifty-four and 27/100 Dollars (\$154.27), making a total of Thirty-three Thousand Four Hundred Nineteen & 27/100 Dollars (\$33,419.27), less said sum of Eighty-five Hundred Dollars (\$8500.00), is the amount for which libelant is entitled to have judgment in this action, to wit, the sum of Twenty-four Thousand Nine Hundred Nineteen & 27/100 Dollars (\$24,919.27);

IT IS ORDERED, ADJUDGED AND DECREED by the Court that the libelant, S. P. Weston, as trustee in bankruptcy of the Globe Navigation Company, bankrupt, do have and recover of and from the respondent, Firemen's Fund Insurance Company, the sum of Twenty-four Thousand Nine Hundred Nineteen & 27/100 Dollars (\$24,919.27), with interest thereon from this day, together with all costs hereafter incurred by said respondent herein, for all of which let execution issue.

ORDERED and DECREED in open Court this 23rd day of April, 1915. Respondent excepts to the

signing and entry of this Decree. Exception allowed.

JEREMIAH NETERER,
Judge.

[Indorsed]: Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 23, 1915. Frank L. Crosby, Clerk. By E. M. L. Deputy. [541]

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

IN ADMIRALTY—No. 2156.

THE GLOBE NAVIGATION COMPANY, a Corporation,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

Notice of Appeal.

To Clise & Poe, and to W. H. Bogle, Proctors for the
Libelant and Substituted Libelant Above-
named; and to Frank L. Crosby, Clerk of the
Above-entitled Court:

You, and each of you, will please take notice that

the respondent above named hereby appeals from the final decree made and entered herein on the 23d day of April, 1915, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, Seattle, Washington, April 29, 1915.

McCUTCHEN, OLNEY, WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT &
SHORTS,

Proctors for Respondent and Appellant. [542]

Copy of within Notice received and due service thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,
Attorney for Libelant.

[Indorsed]: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 30, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [543]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libellant,

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libellant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

**Order Fixing Amount of Bond on Appeal Staying
Execution.**

A decree having been signed and entered in the above-entitled cause by the above-entitled court on April 23, 1915, in favor of the libellant and substituted libellant above named, and the respondent above named having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, by filing in the office of the clerk of the above-entitled court and serving on proctors for the adverse parties a notice signed by it as appellant or its proctors, that it appeals to the United States Circuit Court of Appeals for the Ninth Circuit from said decree, and said respondent and appellant desiring to stay the execution of the said decree, and

having by its proctors of record moved this Court to fix by order the amount of the bond which it should file as a bond on appeal staying the execution of said decree, and all parties of record being represented by their proctors of record, the Court being fully advised in the premises;

IT IS NOW ORDERED AND ADJUDGED that, to stay the execution [544] of said decree, the appellant shall execute, together with good and sufficient sureties, a bond on appeal staying execution in the principal sum of \$30,000.00.

Done in open court this 30th day of April, 1915.

(ENTER) JEREMIAH NETERER,
Judge.

Copy of within Order Fixing Amount of Stay Bond received and due service thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,
Attorney for Libelant.

[Endorsed]: Order Fixing Amount of Bond on Appeal Staying Execution. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 30, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [545]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

Bond on Appeal Staying Execution.

KNOW ALL MEN BY THESE PRESENTS:
That we, Fireman's Fund Insurance Company, a
corporation organized and existing under and by
virtue of the laws of the State of California, as prin-
cipal, and Hartford Accident & Indemnity Company,
a corporation duly organized under the laws of the
State of Connecticut, and authorized to transact
business as surety within the Western District of
the State of Washington, as surety, are held and
firmly bound unto The Globe Navigation Company, a
corporation, a bankrupt, and to S. P. Weston, trustee
in bankruptcy of said The Globe Navigation Com-
pany, a bankrupt, the libelant and substituted libel-
ant above-named, in the sum of \$30,000.00 for the

payment of which well and truly to be made we bind ourselves and each of us, our, and each of our successors and assigns jointly and severally firmly by these presents.

SEALED WITH OUR SEALS AND DATED this 30th day of April, 1915.

WHEREAS, the respondent above named, Fireman's Fund Insurance [546] Company, a corporation, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the above-entitled court, signed and entered in the above-entitled cause on April 23, 1915, which decree orders that the said respondent shall pay to the said libelant and substituted libelant the sum of Twenty-four Thousand Nine Hundred Nineteen and 27/100 (\$24,919.27) Dollars, with interest thereon from April 23, 1915, together with all costs thereafter incurred by said respondent in said cause, and that execution issue therefor; and,

WHEREAS, said Fireman's Fund Insurance Company, a corporation, respondent above-named, desires during the process of such appeal to stay the execution of said decree of the above-entitled court;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Fireman's Fund Insurance Company, a corporation, respondent above-named, appellant, shall abide by and perform whatever decree may be rendered by said United States Circuit Court of Appeals for the Ninth Circuit in this cause, or on the mandate of said United States Circuit Court of Appeals for the Ninth Circuit by the above-entitled court, then this obliga-

tion shall be void; otherwise, the same shall be and remain in full force and effect.

FIREMAN'S FUND INSURANCE COM-
PANY,

By FRANK G. TAYLOR,
General Agent.

HARTFORD ACCIDENT & INDEMNITY
COMPANY,

By B. C. SHORTS,
Attorney in Fact.

[Seal] Attest: R. C. ATKINSON,
Attorney in Fact. [547]

Copy of within Bond received and due service
thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,
Attorney for Libelant.

[Indorsed]: Bond on Appeal Staying Execution.
Filed in the U. S. District Court, Western Dist. of
Washington, Northern Division. Apr. 30, 1915.
Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.
[548]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

**Notice of Filing Cost Bond on Appeal and Bond on
Appeal Staying Execution.**

To Clise & Poe and to W. H. Bogle, Proctors for Li-
belant and Substituted Libelant Above-named:

Please take notice that the respondent above-
named has this day filed in the office of the clerk of
the District Court of the United States for the West-
ern District of Washington its cost bond on appeal
and its bond on appeal staying execution in the above-
entitled cause, both of which said bonds are executed
by said Fireman's Fund Insurance Company, a cor-
poration, as principal, and by Hartford Accident &
Indemnity Company, a corporation, as surety, and
that the address, residence and place of business of
R. C. Atkinson, who attested said bond as the attor-
ney in fact for said surety, is Office No. 607, Hoge

586 *Fireman's Fund Insurance Company vs.*

Building, Seattle, Washington, and that the address, residence and place of business of B. C. Shorts, who executed said bonds as attorney in fact for said surety, is Office No. 901, Alaska Building, Seattle, Washington. [549]

DATED, Seattle, Washington, April 30, 1915.

McCUTCHEN, OLNEY, WILLARD,

IRA A. CAMPBELL,

BALLINGER, BATTLE, HULBERT &

SHORTS,

Proctors for Appellant, the Respondent Above-named.

Copy of within Notice received and due service thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,

Attorney for Libelant.

[Indorsed]: Notice of Filing Cost Bond on Appeal. Filed in the U. S. Dist. Court, Western Dist. of Washington, Northern Division. Apr. 30, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [550]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

IN ADMIRALTY—No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

Cost Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That we, Fireman's Fund Insurance Company, a corporation organized and existing under and by virtue of the laws of the State of California, as principal, and Hartford Accident & Indemnity Company, a corporation duly organized under the laws of the State of Connecticut and authorized to transact business as surety within the Western District of the State of Washington, as surety, are held and firmly bound unto The Globe Navigation Company, a corporation, a bankrupt, and to S. P. Weston, trustee in bankruptcy of said The Globe Navigation Company, a bankrupt, the libelant and substituted libelant above-named, in the sum of Two Hundred Fifty (\$250.00) Dollars, to be paid unto said libelant and

substituted libelant, for the payment of which well and truly to be made we bind ourselves and each of us, our, and each of our successors and assigns jointly and severally firmly by these presents.

SEALED WITH OUR SEALS AND DATED
this 29th day of April, 1915.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that whereas Fireman's Fund Insurance Company, a corporation, respondent above-named, as appellant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the above-entitled court, signed and entered herein on the 23d day of April, 1915;

NOW, THEREFORE, if the said Fireman's Fund Insurance Company, a corporation, appellant and respondent above-named, shall prosecute its appeal to effect and pay the costs, if the appeal is not sustained, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

FIREMAN'S FUND INSURANCE COMPANY,

By FRANK G. TAYLOR,

General Agent.

HARTFORD ACCIDENT & INDEMNITY
COMPANY,

By B. C. SHORTS,

Attorney in Fact.

[Seal]

Attest: R. C. ATKINSON,

Attorney in Fact. [551]

Copy of within Bond received and due service thereof acknowledged this 30th day of April, 1915.

H. R. CLISE,
Attorney for Libelant.

[Indorsed]: Cost Bond on Appeal. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 30, 1915. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [552]

[Stipulation and Order re Transmission of Original Exhibits, etc., to Appellate Court.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Corporation,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of THE GLOBE NAVIGATION COMPANY, a Bankrupt),

Substituted Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that all exhibits introduced in the above-entitled cause, and in the depositions taken in said cause, be sent

590 *Fireman's Fund Insurance Company vs.*

to the United States Circuit Court of Appeals for the Ninth Circuit as original exhibits with the apostles on appeal.

CLISE & POE,

BOGLE, MERRITT, GRAVES & BOGLE,

Proctors for Libelant.

McCUTCHEN, OLNEY & WILLARD,

IRA A. CAMPBELL,

BALLINGER, BATTLE, HULBERT &

SHORTS,

Proctors for Respondent.

IT IS SO ORDERED.

JEREMIAH NETERER,

District Judge. [553]

[Indorsed]: Stipulation of Use on Appeal of Original Exhibits. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 25, 1915. Frank L. Crosby, Clerk. By E. M. L., Deputy. [554]

*In the District Court of the United States, for the
Western District of Washington, Northern
Division.*

IN ADMIRALTY—No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of GLOBE
NAVIGATION COMPANY, a Bankrupt),

Substituted Libelant,

vs.

FIREMEN'S FUND INSURANCE COMPANY, a
Corporation,

Respondent.

Assignment of Errors.

Comes now the FIREMEN'S FUND INSURANCE COMPANY, respondent and appellant herein, and says that in the record, opinion, decision and final decree in said cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors in which it relies, to wit:

I.

That the District Court erred in entering the decree herein of date the 23d day of April, 1915, ordering, adjudging and decreeing that libelant, S. P. Weston (Trustee in bankruptcy of Globe Navigation Company, a bankrupt,) do have and recover of and from the respondent, Fireman's Fund Insurance Company, the sum of twenty-four thousand

nine hundred [555] nineteen and 27/100 (24,919.27) dollars, with interest thereon from the date of said decree, together with costs, thereafter incurred by respondent (appellant).

II.

That the District Court erred in entering the decree herein of date the 23d day of April, 1915, ordering, adjudging and decreeing that said libellant (appellee) do have and recover the sum of one hundred fifty-four and 27/100 (154.27) dollars, as costs.

III.

That the District Court erred in holding and deciding that the sum of thirty thousand (30,000) dollars, together with interest thereon amounting to three thousand two hundred sixty-five (3,265) dollars, to the date of said decree, and respondent's (appellant's) costs and disbursements in the sum of one hundred fifty-four and 27/100 (154.27), making a total of thirty-three thousand four hundred nineteen and 27/100 (33,419.27) dollars, less the credit sum of eighty-five hundred (8,500) dollars, was the sum for which libellant (appellee) was entitled to have judgment in the action herein.

IV.

That the District Court erred in not holding and deciding that respondent (appellant) was not entitled to any recovery in said action.

V.

That the District Court erred in not holding and deciding that the libel herein should be dismissed with costs to respondent (appellant). [556]

VI.

That the District Court erred in holding and deciding that the implied warranty of seaworthiness in the policies in suit was not violated and the policies not voided.

VII.

That the District Court erred in holding and deciding that the implied warranty of seaworthiness in the policies in suit was superseded by the express stipulation contained in condition 5 on the face of said policies.

VIII.

That the District Court erred in holding and deciding that the implied warranty of seaworthiness in the policies was superseded, as respected the seaworthiness of said vessel for the carriage of her cargo of lumber, by the express stipulation (condition 5 on the face of said policies) of the parties under the maxim *expressio unius est exclusio alterius*.

IX.

That the District Court erred in holding and deciding that the vessel was seaworthy.

X.

That the District Court erred in holding and deciding that respondent (appellant), by its answer filed in this case, admitted liability.

XI.

That the District Court erred in holding and deciding that respondent (appellant) did not at any time contend for unseaworthiness of the vessel until after the testimony was submitted in this case and

amended answer filed. [557]

XII.

That the District Court erred in holding and deciding that the contention of unseaworthiness could not be sustained.

XIII.

That the District Court erred in not holding and deciding that there was an implied warranty under the policies that the vessel should be seaworthy at the commencement of the voyage on which she was dismasted and the loss occurred which forms the basis of the action herein.

XIV.

That the District Court erred in not holding and deciding that the vessel sprung a leak in usual weather to be reasonably anticipated shortly after the commencement of her voyage without having encountered any perils of the sea sufficient to account for said leakage, and in not holding and deciding that by reason of said leakage a presumption of unseaworthiness at the commencement of her voyage was raised against said vessel.

XV.

That the District Court erred in not holding and deciding that the steam-pump was in an unseaworthy condition at the time an effort was first made to use the same on said voyage, and in not holding and deciding that by reason thereof a presumption of unseaworthiness at the commencement of her voyage was raised against said vessel.

XVI.

That the District Court erred in not holding and

deciding that the presumption of unseaworthiness arising from the springing a leak of said vessel immediately after the [558] commencement of her said voyage in usual weather to be reasonably anticipated without having encountered any peril of the sea sufficient to account for said leakage, was not overcome by any proof offered by libellant (appellee).

XVII.

That the District Court erred in not holding and deciding that the presumption of unseaworthiness raised against said vessel because of the condition of her steam-pump was not overcome by any proof offered by libellant (appellee).

XVIII.

That the District Court erred in not holding and deciding that the policies of insurance in suit herein were voided by the breach of the implied warranty of seaworthiness of said vessel.

XIX.

The District Court erred in not holding and deciding that respondent (appellant) was entitled to a decree dismissing said libel with costs.

XX.

That the District Court erred in holding and deciding that a constructive total loss under the policies in suit was one which gives to a person the right to abandon under Section 2717 of the Civil Code of California.

XXI.

That the District Court erred in holding and deciding that the clauses endorsed on the margins

of the policies in suit changed the stipulations in the bodies of the policies materially. [559]

XXII.

That the District Court erred in holding and deciding that the clauses endorsed on the margins of the policies in suit could not be reconciled with the provisions and conditions in the bodies of the policies.

XXIII.

That the District Court erred in holding and deciding that the vessel might be abandoned if the contemplated voyage could not be lawfully performed without incurring a risk which a prudent man would not take under the circumstances.

XXIV.

That the District Court erred in holding and deciding that the vessel might be abandoned if the facts presented a case of extreme hazard and that the probable expense would exceed one-half the value of the vessel, although it should happen that she was afterward recovered at a less expense.

XXV.

That the District Court erred in holding and deciding that the test in determining whether the loss is such as to permit the insured to abandon is such as to ascertain whether under all the circumstances attending the vessel a prudent owner would have declined to repair.

XXVI.

That the District Court erred in holding and deciding that in determining whether there is a liability, the Court must determine whether the loss

occasioned was more than one-half of the payment required under the policies. [560]

XXVII.

That the District Court erred in holding and deciding that the average for all the bids for repairs should be taken in determining whether a constructive total loss existed.

XXVIII.

That the District Court erred in holding and deciding that its calculations to determine whether or not a constructive total loss existed should be based upon the sum of twenty-three thousand four hundred and fifty-five (23,455) dollars as the average of all the bids received.

XXIX.

That the District Court erred in holding and deciding that the sum of five thousand three hundred ninety-nine and $46/100$ (5,399.46) dollars, designated as salvage adjustment, should be added to the average of the bids received for repairs for the purpose of determining whether a constructive total loss existed under the policies.

XXX.

That the District Court erred in holding and deciding that under the marginal clause the salvage charges and general average were to be added to the cost of repairs for the purpose of determining whether or not a constructive total loss existed under the policies.

XXXI.

That the District Court erred in holding and deciding that a loss of more than one-half of the

valuation of the vessel was shown. [561]

XXXII.

That the District Court erred in holding and deciding that under the stipulations of the policies one-third of the repairs is to be deducted for new and old.

XXXIII.

That the District Court erred in holding and deciding that the average of the bids submitted for repairs should be taken, or that one-third new for old should be deducted therefrom.

XXXIV.

That the District Court erred in holding and deciding that the amount of the loss was fifteen thousand six hundred and thirty-six and 67/100 (15,636.67) dollars.

XXXV.

That the District Court erred in holding and deciding that the amount of loss should be determined by taking the average of the bids submitted on repairs and deducting one-third for new and old.

XXXVI.

That the District Court erred in holding and deciding that 30/45 of the sum of fifteen thousand six hundred and thirty-six and 67/100 (15,636.67) dollars should be taken to determine the amount to be paid by respondent (appellant).

XXXVII.

That the District Court erred in holding and deciding that the amount to be paid by respondent (appellant) equals the sum of ten thousand four

hundred twenty-four and 44/100 (10,424.44) dollars.
[562]

XXXVIII.

That the District Court erred in holding and deciding that the so-called salvage adjustment of five thousand three hundred ninety-nine and 46/100 (5,399.46) dollars should be added to the aforementioned sum of ten thousand four hundred twenty-four and 44/100 (10,424.44).

XXXIX.

That the District Court erred in holding and deciding that the amount to be paid by the defendant company made a total of fifteen thousand eight hundred twenty-three and 90/100 (15,823.90) dollars.

XL.

That the District Court erred in holding and deciding that other items not referred to in its opinion were properly chargeable under the general average clause.

XLI.

That the District Court erred in holding and deciding that other items not included in the general average adjustment offered in evidence were properly chargeable under the general average clause.

XLII.

That the District Court erred in holding and deciding that the question of abandonment is largely determined by the amount of loss.

XLIII.

That the District Court erred in holding and deciding that a constructive abandonment was made.

XLIV.

That the District Court erred in holding and deciding that Section 2705 of the Civil Code of California was applicable to this case.

XLV.

That the District Court erred in holding and deciding that the decision of the Supreme Court of California in *Victoria Steamship Company v. Western Assurance Company*, 139 Pac. 808, is applicable to this case.

XLVI.

That the District Court erred in holding and deciding that no acts of abandonment were necessary under the policies in suit in this action.

XLVII.

That the District Court erred in holding and deciding that there was an abandonment within the provisions of the law controlling the contract and policies in suit.

XLVIII.

That the District Court erred in holding and deciding that under the facts in the case, as disclosed by the evidence, and because of the vessel having been actually abandoned at sea, and the steps taken by plaintiff (appellee), there was an abandonment within the provisions of the law controlling the contract and the policies in suit.

XLIX.

That the District Court erred in holding and deciding that on its opinion filed herein a decree should be entered for plaintiff (appellee). [564]

L.

That the District Court erred in not holding and deciding that the marginal clauses endorsed on the policies, and the clauses in the bodies and on the backs of the policies, were to be construed, if possible, so that all clauses could stand and have effect.

LI.

That the District Court erred in not holding and deciding that the marginal clauses endorsed on the policies, and the clauses in the bodies and on the backs of the policies, were to be construed so that all clauses could stand and have effect.

LII.

That the District Court erred in not holding and deciding that the clauses endorsed on the margin of said policies were consistent with the clauses in the bodies and on the backs of the policies, so that all clauses could stand and have effect.

LIII.

That the District Court erred in not holding and deciding that no verbal abandonment was made on October 14, 1911.

LIV.

That the District Court erred in not holding and deciding that no valid and effective abandonment was made on October 14, 1911.

LV.

That the District Court erred in not holding and deciding that no valid and effective abandonment was made on October 16, 1911. [565]

LVI.

That the District Court erred in not holding and

deciding that no sufficient grounds existed on October 16, 1911, for the giving of a valid and effective notice of abandonment as for constructive total loss of said vessel under said policies.

LVII.

That the District Court erred in not holding and deciding that the insured (libellant) under the policies in suit should not have the right to abandon the vessel ("Nottingham") unless the amount which respondent (Appellant) would be liable to pay under an adjustment as of partial loss for labor and materials (exclusive of salvage or general average expenses and the cost of funds) should exceed one-half the amount insured by the policies.

LVIII.

That the District Court erred in not holding and deciding that, in determining the amount which respondent (appellant) would be liable to pay under an adjustment as of partial loss for labor and materials for the repair of the damages suffered by said vessel, one-third should be deducted from the cost of all repairs of injuries and losses on the vessel by the perils insured against (except on anchors, copper and calking under the copper) as a commutation for the average difference between new and old; and that instead of deducting one-third for new on the expense of remetaling, including docking and calking, there should be deducted 2½% of the cost of remetaling, docking and calking, after deducting the value of the old metal and nails, for each and every month the metal shall have been on the vessel at the [566] time when it was taken off; and if it

shall have been on forty months or more, that the cost should be wholly borne by the insured (libelant), and the vessel ("Nottingham") being on a single bottom that the same rule should apply to docking and calking, but one-twelfth to be deducted from the cost of painting for every month the paint shall have been on the bottom, and when the same shall not have been repainted for twelve months, that the whole cost was to be borne by the insured (libelant) and that when the vessel, being on a single bottom, was docked for the purpose of repairing and recalking her keel or bottom by reason of having stranded, that the expense of docking should be proportioned *pro rata* upon the calking and other repairs in proportion of the number of days' work expended upon each respectively, as provided by clause 8 on the face, and rule 2, section 2, on the back of the policies in suit.

LIX.

That the District Court erred in not holding and deciding that the insured (libelant) did not have the right to abandon the vessel for the reason that the amount which respondent (appellant) would be liable to pay under an adjustment as a partial loss for labor and materials (exclusive of salvage and general average expenses and the cost of funds) did not exceed one-half the amount insured by the policies, to wit, fifteen thousand (15,000) dollars.

LX.

That the District Court erred in not holding and deciding that the insured (libelant) did not have the right to abandon the vessel for the reason that the amount which respondent (appellant) would be liable

to pay under an [567] adjustment as a partial loss for labor and materials, including the general average and salvage charges, did not exceed one-half the amount insured by the policies, to wit, fifteen thousand (15,000) dollars.

LXI.

That the District Court erred in holding and deciding that general average and salvage charges should be added to the amount which respondent (appellant) would be liable to pay under an adjustment as of partial loss for labor and materials in determining the right of libellant (appellee) to abandon said vessel as for a constructive total loss.

LXII.

That the District Court erred in not holding and deciding that a constructive total loss did not exist under the policies in suit for the reason that libellant (appellee) did not have the right to abandon its interest in said vessel as for a constructive total loss under the terms and conditions of the policies in suit.

LXIII.

That the District Court erred in not holding and deciding that the right to abandon said vessel as for a constructive total loss under said policies was determined by the terms and conditions contained in clauses 8 and 9 on the faces of said policies, and the rules for adjustment of losses, and particularly rule 2 thereof, on the backs of said policies.

LXIV.

That the District Court erred in not holding and deciding that, if general average and salvage charges

were to be added to the amount for which respondent (appellant) [568] would be liable to pay an adjustment as a partial loss for labor and materials, to make a constructive total loss of said vessel under said policies, the amount of general average and salvage charge to be so added was the sum of three thousand seven hundred fifty-eight and 31/100 (3,758.31) dollars.

LXV.

That the District Court erred in holding and deciding that any other losses or expenditures were chargeable in general average other than those so charged and included in the general average adjustment prepared by Johnson & Higgins, adjusters appointed by libelant (appellee), offered in evidence in said cause.

LXVI.

That the District Court erred in not holding and deciding that the bid of the Albina Engine & Machine Works in the sum of twenty thousand nine hundred fifty (20,950) dollars for the repair of said vessel should be taken as the basis for determining the cost of repairing the damage to said vessel for the purpose of ascertaining whether or not under the terms and conditions of the policies in suit a constructive total loss of said vessel existed.

LXVII.

That the District Court erred in not holding and deciding that no other items for repairs other than those contained in the specifications and on which bids were received and not otherwise agreed to between libelant and respondent, should be included

in the estimate of the cost of repairing said vessel for the purpose of determining whether or not under the terms and conditions of the policies in suit a constructive total loss existed. [569]

LXVIII.

That the District Court erred in not holding and deciding that libelant (appellee) had not sustained the burden of proof resting upon it to show that the amount which respondent (appellant) would be liable to pay under an adjustment as of partial loss for labor and materials, (exclusive of salvage or general average expenses and costs of funds) exceeded one-half the amount insured, for the purpose of determining whether or not a constructive total loss existed under said policies.

LXIX.

That the District Court erred in not holding and deciding that libelant (appellee) had not sustained the burden of proof resting upon it to show that the amount which respondent (appellant) would be liable to pay under an adjustment as of partial loss for labor and materials (inclusive of the general average and salvage charges) exceeded one-half the amount insured, for the purpose of determining whether or not a constructive total loss existed under said policies.

LXX.

That the District Court erred in not holding and deciding that libelant (appellee) had not sustained the burden of proof resting upon it to show that a constructive total loss of said vessel existed under the terms and conditions of the policies in suit.

LXXI.

That the District Court erred in not holding and deciding that a constructive total loss of said vessel did not exist under the policies in suit, and in not [570] directing that a decree should be entered in said action dismissing the libel and adjudging costs to respondent (appellant).

LXXII.

That the District Court erred in not holding and deciding, if a constructive total loss existed, that the sum of three thousand seven hundred fifty-eight and $31/100$ (3,758.31) dollars should be credited upon the total amount covered by said policies, to wit, upon the sum of thirty thousand (30,000) dollars.

LXXIII.

That the District Court erred, if a constructive total loss of said vessel existed under said policies and a valid and sufficient abandonment thereof was made, in not crediting the general average charges paid by respondent (appellant) to wit, the sum of three thousand seven hundred fifty-eight and $31/100$ (3,758.31) dollars upon the total amount insured by said policies, to wit, upon the sum of thirty thousand (30,000) dollars.

In order that the foregoing assignment of errors may be and appear of record said appellant files and presents the same, and prays that such disposition be made thereof as in accordance with the law and the statutes of the United States in such cases made and provided, and said appellant prays a reversal of the decree herein heretofore made and entered in the above cause and appealed from, [571] and

that it may have such other and further relief as shall be deemed meet and equitable.

DATED: May 26th, 1915.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
BALLINGER, BATTLE, HULBERT &
SHORTS,

Proctors for Respondent and Appellant.

Receipt of a copy of the within assignment of errors is hereby admitted this 28th day of May, 1915.

CLISE & POE,
Proctor for Libelant.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 29, 1915. Frank L. Crosby Clerk. By E. M. Lakin, Deputy. [572]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

FIREMAN'S FUND INSURANCE COMPANY, a
Corporation,

Libelant,

vs.

GLOBE NAVIGATION COMPANY, a Corpora-
tion,

Respondent,

S. P. WESTON (Trustee in Bankruptcy of GLOBE
NAVIGATION COMPANY, a Bankrupt),
Substituted Respondent.

Praeceptum for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

You will please prepare the apostles in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore perfected in said court, and include in said apostles the following pleadings, proceedings and papers on file, to wit:

1. All those papers required by section 1 of paragraph I of rule 4 of the rules of Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit. [573]

2. All the pleadings in the said cause, including the libel, and amended libel, and the answers to the same, with any and all exhibits annexed to said pleadings.

3. All the testimony and other proofs adduced in the cause, including the testimony taken at the trial; all depositions taken by either party and admitted in evidence; all exhibits introduced by either party, said exhibits and all of them to be sent up to said Circuit Court of Appeals as original exhibits.

4. The opinion and decision of the Court.

5. The final decree, notice of appeal, cost bond on appeal, and notice of filing of bond.

6. The assignment of errors.

We hereby waive our right to have the record in this cause printed by the clerk of the above-entitled court, and hereby elect to have said record printed by the clerk of the United States Circuit Court of

610 *Fireman's Fund Insurance Company vs.*

Appeals for the Ninth Circuit.

McCUTCHEN, OLNEY & WILLARD,
IRA A. CAMPBELL,
BALLINGER, BATTLE, HULBERT &
SHORTS,

Proctors for Libelant.

[Indorsed]: Praecipe for Apostles on Appeal.
Filed in the U. S. District Court, Western Dist. of
Washington, Northern Division. May 25, 1915.
Frank L. Crosby, Clerk. By E. M. L., Deputy.
[574]

*In the District Court of the United States, for the
Western District of Washington, Northern Di-
vision.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant.

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libelant,

vs.

FIREMAN'S FUND INSURANCE COMPANY,
a Corporation,

Respondent.

**Certificate of Clerk U. S. District Court to Apostles,
etc.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 774 pages, numbered from 1 to 774 inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitutes the record on appeal to the said Circuit Court of Appeals for the Ninth Circuit from the District Court of the United States for the Western District of Washington. [575]

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the respondent and appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

612 *Fireman's Fund Insurance Company vs.*

Clerk's fee (Sec. 828 R. S. U. S.)	
for making record, certificate or	
return, 1443 folios at 15c.....	\$216.45
Certificate of Clerk to transcript of	
Record, 4 folios at 15c.....	.60
Seal to said Certificate.....	.20
Certificate of Clerk to Original Ex-	
hibits, 3 folios at 15c.....	.45
Seal to said Certificate.....	.20
	<hr/>
Total.....	\$217.90

I hereby certify that the above cost for preparing and certifying record amounting to \$217.90, has been paid to me by Messrs. McCutchen, Olney & Willard, Ira A. Campbell, Esq., and Messrs. Ballinger, Battle, Hulbert & Shorts, Proctors for Respondent.

IN WITNESS whereof I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 27th day of July, 1915.

[Seal]

FRANK L. CROSBY,

Clerk U. S. District Court. [576]

[Endorsed]: No. 2631. United States Circuit Court of Appeals for the Ninth Circuit. Fireman's Fund Insurance Company a Corporation, Appellant, vs. The Globe Navigation Company, a Corporation, and S. P. Weston, as Trustee in Bankruptcy of the Globe Navigation Company, a Corporation, Bankrupt, Appellees. Apostles on Appeal. Upon Appeal from the United States District Court for the

Western District of Washington, Northern Division.
Filed July 30, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Cor-
poration,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libelant.

vs.

FIREMAN'S FUND INSURANCE COMPANY, a
Corporation,

Respondent.

**Order Enlarging Time [to July 1, 1915] to Transmit
Apostles on Appeal to Circuit Court of Ap-
peals.**

Now, on this 27th day of May, 1915, upon motion
of proctors for respondent, and for sufficient cause
appearing, it is ordered that the time within which
the clerk of this court may prepare, certify and

transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 1st day of July, 1915.

JEREMIAH NETERER,

District Judge.

[Endorsed]: No. 2156. In the District Court of the United States, for the Western District of Washington. The Globe Navigation Co., a Cor., Libellant, S. P. Weston, etc., Substituted Libellant, vs. Fireman's Fund Insurance Co., a Cor., Respondent. Order Enlarging Time to Transmit Apostles on Appeal to Circuit Court of Appeals. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 27, 1915. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy.

No. 2631. United States Circuit Court of Appeals, for the Ninth Circuit. Order Under Rule 16 Enlarging Time to July 1, 1915, to File Record thereof and to Docket Case. Filed Jul. 30, 1915. F. D. Monckton, Clerk.

*In the District Court of the United States, for the
Western District of Washington, Northern Division.*

No. 2156.

THE GLOBE NAVIGATION COMPANY, a Corporation,

Libelant,

S. P. WESTON (Trustee in Bankruptcy of THE
GLOBE NAVIGATION COMPANY, a
Bankrupt),

Substituted Libelant.

vs.

FIREMAN'S FUND INSURANCE COMPANY, a
Corporation,

Respondent.

**Order Enlarging Time to [August 1, 1915] to
Transmit Apostles on Appeal to Circuit Court
of Appeals.**

Now, on this 26th day of June, 1915, upon motion of proctors for respondent, and for sufficient cause appearing, it is ordered that the time within which the clerk of this court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby extended to and including the 1st day of August, 1915.

JEREMIAH NETERER,

District Judge.

[Endorsed]: No. 2156. In the District Court of the United States, for the Western District of Washington. The Globe Navigation Co., a Cor., Libelant, S. P. Weston, etc., Substituted Libelant, vs. Fireman's Fund Insurance Co., a Cor., Respondent. Order Enlarging Time.

No. 2631. United States Circuit Court of Appeals, for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Aug. 1, 1915, to File Record thereof and to Docket Case. Filed Jul. 30, 1915. F. D. Monckton, Clerk.